

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	CRIMINAL ACTION FILE
)	NO. 1:06-CR-147-WSD-2
v.)	
)	ATLANTA, GEORGIA
EHSANUL ISLAM SADEQUEE (2))	
)	
Defendants.)	
_____)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE WILLIAM S. DUFFEY, JR.,
UNITED STATES DISTRICT JUDGE, AND A JURY

VOLUME 6
Tuesday, August 11, 2009

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*Proceedings recorded by mechanical stenography
and computer-aided transcript produced by*

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1 Tuesday Morning Session

2 August 11, 2009

3 9:28 a.m.

4 -- -- --

5 P R O C E E D I N G S

6 -- -- --

7 (In open court without a jury present:)

8 THE COURT: Well, I have studied the issue but
9 apparently there has been a change in positions; is that
10 right?

11 MR. SAMUEL: Yes, Your Honor.

12 THE COURT: It doesn't surprise me, but what is the
13 change in position?

14 MR. SAMUEL: Your Honor, defendant asks to withdraw
15 the lesser included on Count Two.

16 THE COURT: All right. I think that was the
17 conclusion I had reached, that it's not supported. But
18 I appreciate -- and it was very helpful to have the
19 submissions, and I actually made a chart of the elements of
20 both of the offenses, and that's where I began my
21 comparison. That's how I analyzed where the legal issues
22 were.

23 So that's been withdrawn. There are no lesser
24 included offenses to be instructed on.

25 The one thing -- and I have gone back and forth in

1 my own mind about this because it could be that the defendant
2 doesn't want it -- you know, I gave a limiting instruction
3 regarding the December 2001 e-mail right after the e-mail was
4 introduced.

5 Sometimes if it's requested, I will give them also
6 in the instruction, but sometimes the defendant would not
7 like to draw attention to it. So I didn't know what your
8 preference was. I'm pleased to do that if you want.

9 MR. SAMUEL: We don't think another limiting
10 instruction is necessary, Your Honor.

11 THE COURT: Then I will not do that.

12 All right. Is there anything else we need to
13 discuss before -- my plan is as soon as all the jurors are
14 here, I thought we would start, if that's okay with
15 everybody?

16 MR. NAHMIAS: That's fine. I assume 10:00 we
17 should be here ready to go?

18 THE COURT: Well, for example, if they are here in
19 the next five minutes, I would like to start.

20 MR. NAHMIAS: Okay. Then I will get Mr. McBurney
21 and Ms. Collins.

22 THE COURT: Now, I think them being here in the
23 next five minutes is unlikely, but if you will be on call, as
24 soon as they are here, we will give you a call and we will
25 get started.

1 MR. NAHMIAS: So we will be on call in our office.

2 THE COURT: Yes. Anything else we need to do
3 before we adjourn?

4 MR. SAMUEL: No, Your Honor.

5 THE COURT: Then we will be in recess.

6 (A recess is taken at 9:31 a.m.)

7 -- -- --

8 (In open court without a jury present at
9 10:10 a.m.):)

10 THE COURT: Is there anything we need to discuss
11 before we bring the jurors in?

12 MR. MCBURNEY: No, sir.

13 THE COURT: Mr. Sadequee?

14 MR. SADEQUEE: No.

15 THE COURT: Let me make a couple comments before
16 the jury does come in.

17 First, I want to remind you, Mr. Sadequee, that you
18 may of course discuss the evidence in the case and what the
19 evidence you believe shows, but closing arguments are
20 restricted to the evidence in the case and your views on what
21 that shows with respect to the charges and what you believe
22 would be an appropriate verdict in the case.

23 Second, I would tell the spectators that this is
24 a court of law and that this is a federal criminal trial,
25 and that there should not be any audible or other visible

1 signs made by any member of the audience during the course
2 of the presentations or during the course of my
3 instructions.

4 And if somebody were to engage in making audible
5 remarks or gestures or the like, that I will have them
6 removed from the courtroom.

7 All right. Please bring the jurors in.

8 (In open court with a jury present:)

9 THE COURT: Good morning, everybody. I hope you
10 had a good evening.

11 As you know, yesterday all the evidence was
12 presented and it was closed, both parties rested. We have
13 had our charge conference, and we are now prepared to proceed
14 to the next two phases at least in the courtroom that are to
15 be conducted, the first of which are the arguments, the final
16 arguments made by the parties. And then after that we will
17 immediately move into my instructions or what we sometimes
18 call my charge to you on the law.

19 The closing statements that are about to be made
20 are not to be considered by you either as evidence in the
21 case or as your instruction on the law. The statements and
22 arguments are intended to simply help you understand the
23 issues and the evidence that has been admitted as well as the
24 positions taken by the parties.

25 And we begin with the government.

1 MR. MCBURNEY: I want to start by thanking you for
2 your patience and your service. In a minute I'm going to
3 delve into the facts of the case and explanation of some of
4 the law that applies in this case, but I want to start while
5 I remember by thanking you all for your time. We are in the
6 second week now. You have clearly paid attention to the
7 witnesses and the evidence, and very shortly the case will be
8 in your hands to decide the guilt or innocence of
9 Defendant Sadequee.

10 The government's position is very clear in this
11 case. It's that the evidence has shown beyond a reasonable
12 doubt -- doubt for which you could give a valid reason, not
13 an irrational doubt, a reasonable doubt -- the evidence has
14 shown beyond a reasonable doubt that the defendant has
15 conspired with others to provide material support to
16 terrorists, he's attempted to provide material support to
17 terrorists, and in fact at least in the form of the casing
18 videos, he was successful in providing material support to
19 terrorists. And that's what I want to talk about in the next
20 few minutes.

21 If I could distill the case into a single sentence,
22 which isn't quite fair given all the hours and days and
23 hundreds of exhibits you have seen, it would be that the
24 defendant provided material support to violent jihad. That's
25 what the case is about.

1 But the indictment has broken that into four
2 different ways he has done so. So the next level of
3 distillation would be the defendant conspired with others to
4 provide material support -- people, personnel -- and
5 property -- the casing videos -- to violent jihad, to
6 terrorists. Not a defined group; I will talk a little bit
7 more about what the destination is in Count One.

8 Second, the defendant attempted with others to
9 provide people and property -- the casing videos -- to
10 terrorists, to violent jihad.

11 And in fact, it's Count Two where I submit to you
12 the government has actually shown the completed act. These
13 casing videos ended up in the hands of Younis Tsouli, someone
14 who was a recruiter for Al-Qaeda in Iraq, someone who was a
15 publicist for Al-Qaeda in Iraq, and they ended up in the
16 possession of Aabid Hussein Khan, Abu Umar, the facilitator,
17 the gatekeeper for LeT camps in Pakistan.

18 The third thing I would say is that the defendant
19 conspired with others to provide personnel, just people, to
20 LeT. That's Count Three. The defendant conspired with
21 others to provide people to LeT.

22 And finally, the defendant actually took a concrete
23 step in conjunction with others, he attempted to provide
24 personnel to LeT.

25 Those are the four pieces of the case. They

1 collapse into the notion that the defendant provided material
2 support to violent jihad. But those are the four counts that
3 you need to consider in this case.

4 Now, as I said in the opening and as you have heard
5 throughout the evidence, this is not a case about free
6 speech. The defendant is not here before you because he
7 thought LeT was a good organization, because he had a poster
8 in his bedroom that said Taliban Forever, because he wrote an
9 article saying Osama Bin Laden is the greatest living
10 individual. That's protected conduct in this country. He's
11 not here because of his beliefs, because of his writings.

12 He's here because of his actions, the agreements he
13 entered into, and the steps he and others took to provide
14 material support to violent jihad.

15 It's also not a case about actual acts of
16 terrorism. As I promised in the opening, you didn't see any
17 bombs go off. The defendant, the most we put in his hands
18 was a paintball gun.

19 Now, you saw a video of a very serious arsenal,
20 bullets, grenades, that lemon detonator timer, AK-47s,
21 et cetera. There were guns in the mix, not in the
22 defendant's hands.

23 It's not a case about the actual commission of the
24 crime of terrorism, the bomb going off, the person being
25 kidnapped, someone being beheaded. It's about the

1 defendant's support for those things.

2 This is what the case is about. And that really
3 doesn't show up real well, but as reminder, that's the
4 gentleman in the video that was found in Mirsad Bektasevic's
5 pocket who was making the two detonators, the timing devices
6 that would allow the electrical current to go through to the
7 bomb, the lemon and then the travel alarm clock. He had the
8 Quran in front of him and a handgun just before that second
9 light went off.

10 And Bektasevic was filming, and every time the
11 light would go off indicating the circuit was complete and in
12 theory the bomb would go off, Mirsad Bektasevic said,
13 Allahu Akbar, God is great.

14 This is what the case is about. Not the
15 defendant's thoughts, not his beliefs, not his translations
16 for Tibyan Publications, but it's about this arsenal that his
17 co-conspirator, the person he talked to on the phone from
18 Bangladesh, the person he chatted with online, the person he
19 e-mailed, the person whose contact information was on the
20 Raksha computer months before the defendant ended up in
21 Bangladesh, it's about the defendant's conspiracy with
22 Mirsad Bektasevic and others to do things like this, collect
23 explosives, bomb belts, bullets, grenades. That's what the
24 case is about, not his thoughts.

25 And it's about these, the casing videos that the

1 defendant made with Syed Haris Ahmed in April of 2005 when
2 they traveled to Washington, D.C., and then sent to, in
3 Syed Haris Ahmed's words, the jihadi brothers
4 overseas. That's what the case is about.

5 Now, the material support in this case breaks down
6 into four episodes, if you will, four different attempts,
7 conspiracies, steps that the defendant took. And that's the
8 common thread across all four. This screen shows you two of
9 them. You have heard about all four of these.

10 The defendant, Syed Haris Ahmed, James, that's
11 Deenin, the gentleman in Canada they met with when they went
12 to Canada in March of 2005, Azdee Omani, another Canadian,
13 and Aabid Hussein Khan, Abu Umar, we learned from Syed Haris
14 Ahmed when he testified that Abu Umar joined them in Canada,
15 these folks conspired to provide themselves, personnel, to
16 terrorists overseas.

17 They conspired to go to Curry Land and ultimately
18 to Mountain Hills National Park. You saw the Mother's Day
19 e-mail from Syed Haris Ahmed. If it didn't work out getting
20 to Pakistan, go to Two Rivers, join Al-Qaeda in Iraq. But
21 ideally let's get to Kashmir and train with LeT and, in the
22 defendant's own words, remember the students, the students
23 are our final main goal, the Taliban, into Afghanistan and
24 ultimately support violent jihad.

25 That's what Count One is all about, that's what

1 Count Two is all about, the provision of personnel in support
2 of violent jihad.

3 Now, you learned about a second set of activities
4 in which the defendant participated. I just mentioned this,
5 that he and Syed Haris Ahmed went to Washington, D.C., to
6 gather these casing videos. These videos, not of the
7 Washington Monument or the Smithsonian, but of the Department
8 of Energy, Department of Commerce, of the fuel tank farm
9 outside of Washington, D.C., and occasionally the political
10 statement: This is where our brothers attacked the Pentagon,
11 the defendant's brothers, Al-Qaeda flying a plane into the
12 Pentagon killing soldiers.

13 These videos, as you saw, were destined for the
14 jihadi brothers. And we actually found at least two people
15 who received them. They were on Tsouli's computer and they
16 were on Khan's computer.

17 So that's the second way in which the defendant
18 with others provided material support.

19 Third, the defendant, Saajid and Hamzah. Saajid is
20 the 17-year-old -- at least he was 17 in May of 2005 --
21 American trying to get to the U.K. Hamzah, the
22 South African.

23 Now, I have Aabid Hussein Khan's name up there with
24 a question mark, and we will get to this later in the
25 closing. It appears that he assisted the defendant in

1 helping recruit Saajid and Hamzah.

2 There is a chat that we will look at in some detail
3 that was found on Aabid Hussein Khan's hard drive. It's
4 using a moniker that we were not able to connect to him, but
5 it stands to reason, it was a chat involving only two people,
6 the defendant and someone named Zoro, and it's found on
7 Khan's computer, that it was Khan.

8 But really the identity of the person doesn't
9 matter. What matters is what was discussed. How do we get
10 these guys, how do we get them on board, how do we get them
11 in camps, how do we get them to participate in violent jihad
12 in the United States and abroad.

13 We will look at what the defendant wrote. The
14 defendant wrote to Saajid about Saajid's ability to carry out
15 his highest duties here, here in the United States.

16 And finally the last thrust of the defendant's
17 efforts to provide material support for violent jihad -- we
18 are going chronologically through these, so the final one in
19 time that you heard about was the September-October episode
20 with Mirsad Bektasevic, Maximus. Bektasevic's cohorts there
21 in Sarajevo, the two gentlemen in the video who were holding
22 the guns while Bektasevic issued the speech in the
23 background.

24 Younis Tsouli was part of this plan and, according
25 to the defendant, he even had some brothers in Bangladesh who

1 were willing to come to Sweden. This is the Al-Qaeda in
2 Northern Europe plan that the defendant had where they would
3 provide themselves as personnel for Al-Qaeda in Northern
4 Europe and perhaps reuse his videos, the casing videos. When
5 they issued this announcement, that would include
6 Mirsad Bektasevic's video, the one found his pocket, of the
7 detonators, of the arsenal, and of the training out in the
8 woods where they were attaching a grenade to a tree and
9 running a trip wire ankle-high in the grass.

10 All four schemes, the common denominators are two:
11 The defendant, and his efforts to support violent
12 jihad. That's what you have seen in the evidence that has
13 been presented to you over this past week, and that evidence
14 supports all four counts that you will see in the indictment.

15 Now, what I want to talk about now is the
16 how. This is about who, the defendant, did what, provide
17 material support, and how did he do it. And it's alleged in
18 several ways in the indictment.

19 Counts One and Three are conspiracies. We will
20 talk a little bit about the law of conspiracy. You will get
21 the final word on what the law of conspiracy is from the
22 Judge when he charges you, but I have the opportunity to
23 explain some of that to you, which I'm about to do.

24 Count Two charges an attempt or a completion. It
25 says that the defendant and others provided or attempted to

1 provide material support, personnel and property.

2 And Count Four is attempt only. We are going to
3 talk a little bit about attempt as well. But we will start
4 with conspiracy.

5 First and most important, despite what you may hear
6 from the defendant in his closing argument, conspiracy is an
7 agreement. It's an illegal agreement. It's an agreement to
8 break the law. It is not a plan.

9 If we all sit around and say, It's hard economic
10 times, we need some money, let's go rob a bank. Are you in?
11 I'm in. Great.

12 We have entered into a conspiracy to rob a
13 bank. We didn't talk about Bank of America versus Wachovia,
14 Peachtree or Piedmont, while it's open or break in afterwards
15 because you have the code to the vault. That's all part of
16 the plan. Those are the details. That's not what the
17 defendant is charged with.

18 A conspiracy is simply an agreement. The crime for
19 Count One at least was likely completed sometime in Canada
20 when the defendant and Syed Haris Ahmed met up with Azdee,
21 Aabid Hussein Khan, Deenin, others, they sat around and said
22 we need to go to Pakistan, we need to go to Curry Land, get
23 that training, so we can join in violent jihad. Once they
24 entered into that agreement, the crime is complete.

25 Now, you have seen a number of substantial steps

1 that were taken in support of that agreement, but that's not
2 required under the law.

3 If you find that the defendant entered into an
4 agreement with the people I just mentioned about getting to
5 Curry Land and ultimately to Mountain Hills National Park,
6 he's guilty.

7 If you find that he had entered into an agreement
8 with Mirsad Bektasevic and Younis Tsouli and others to be an
9 Al-Qaeda in Northern Europe, the agreement is done. All the
10 additional steps are evidence, are proof of the agreement,
11 but the crime is the agreement itself.

12 And of course in this case we have all sorts of
13 plans. We don't need to show plans, but you have sat through
14 a number of chats when there was the back-and-forth about a
15 basement apartment, who is coming, are you coming in June, my
16 passport won't be ready for six weeks, Haris Ahmed wanting to
17 go to Pakistan first. All that planning you got to see.

18 You got to see a lot of the planning between
19 Tsouli, Bektasevic and the defendant about what their bayaan,
20 their announcement video would say. Should it include the
21 pornos, the videos of Washington, D.C.? What should
22 Bektasevic include in his training video?

23 You got to see some of the planning, but that's not
24 what's required to prove a conspiracy count.

25 A few more points on conspiracy. A formal

1 agreement is not required. We don't need a contract. You
2 don't have to sign in blood or swear allegiance to Osama or
3 anything like that. It's a shared understanding to enter
4 into this criminal enterprise. That's the agreement.

5 Now, we have a fairly detailed description of the
6 agreement in this Mother's Day e-mail that Syed Haris Ahmed
7 sent around.

8 In this case and under these laws, no overt acts or
9 concrete step is required. Had Canadian authorities in
10 conjunction with the FBI kicked in the door of wherever the
11 defendant and others were meeting in Canada after a
12 conversation had been reported where they all said, Yes, we
13 all need to go to Pakistan to get training so we can support
14 violent jihad, in theory the case is done and we could have
15 tried to bring that case.

16 You don't need to have the overt acts of looking
17 for a basement apartment, Ahmed actually going to Pakistan,
18 meeting with Aabid Hussein Khan. We have all these things,
19 but they are not required.

20 Complete knowledge is not required. If we are all
21 in a conspiracy together, we have a general understanding, we
22 are going to rob the bank, if three of you know, I've just
23 got to get the getaway car, but you don't know exactly what
24 time we're going to get to the bank, you just know the
25 getaway car needs to be in the parking lot five blocks away

1 by 5:00 p.m. on Friday, you don't need to know more about it,
2 you are in on the conspiracy. You know we are robbing the
3 bank. You don't need to know all the details.

4 Defendant Sadequee doesn't need to know exactly
5 when Syed Haris Ahmed is going to meet with Aabid Hussein
6 Khan in Karachi to talk about getting to Wana to get into a
7 camp, as long as he knows the general outlines of the plan.

8 Equal participation is not required. There can be
9 a leader, there can be followers, there can be an ameer. We
10 saw that Syed Haris Ahmed was voted the ameer of this effort
11 to get to Curry Land and then onward to Mountain Hills
12 National Park. The defendant was elected ameer of Al-Qaeda
13 in Northern Europe.

14 As long as you are in, it's one for all and all for
15 one, even if your part is small. Even if in the defendant's
16 case he didn't make it to Pakistan, but he was in with James
17 and Azdee and Abu Umar, We have got to get there, we will
18 send Syed Haris Ahmed first.

19 And finally, success is not required. They don't
20 have to achieve their ultimate aim. They have agreed to
21 provide material support. We don't need to show that they
22 actually provided the actual support. And as I mentioned
23 before, we don't need to show that some act of terrorism ever
24 did occur.

25 Now, this is the most technical I will get,

1 I promise. Count One is somewhat complicated in its
2 structure. The Judge's instructions will be complicated, the
3 indictment is a little complicated in its wording.

4 Count One alleges that the defendant and others
5 conspired to provide material support to another conspiracy,
6 but not an entity, not LeT, but some conspiracy, either
7 what's called a 956 (a) -- that's just a statute, it's a
8 number -- a conspiracy to commit violent acts abroad,
9 terrorist acts outside the United States, or 2332 (b), acts
10 of terrorism it says that transcend national boundaries,
11 which we'll let the Court explain, that means that the act
12 would be here. Some of the planning is outside the U.S., but
13 the act is here.

14 So to distill it, in Count One the defendant is
15 charged with conspiring with others to provide material
16 support for some plan, some conspiracy, to commit violent
17 acts abroad or in the United States.

18 Now, you have seen evidence of both: Joining LeT,
19 joining Al-Qaeda in Iraq, joining Taliban. That's violent
20 acts abroad. Al-Qaeda in Northern Europe. That's violent
21 acts abroad.

22 Now, the discussion with Saajid about Saajid
23 becoming an operative here in the United States, that's
24 local. Syed Haris Ahmed talking about oil installations,
25 that's local. These casing videos and what that means,

1 that's local.

2 And you will even see, assuming we have time, an
3 excerpt from one of the defendant's chats with Azdee where
4 the defendant talks about something brewing in the
5 United States in a year or so. That's the local part.

6 But the important thing for you is this underlying
7 conspiracy need not be well-defined. You don't need to worry
8 about, Oh, where was the violent act abroad? Was it going to
9 be a killing or a kidnapping? Was it going to be August
10 10th, 2005? Was it going to be with -- he wanted to join so
11 many organizations, LeT, JeM, which one was it? That's not
12 the government's burden here.

13 The government's burden is to show that the
14 defendant and others conspired to support such a thing. It
15 doesn't need to be well defined.

16 In some instances it is. Al-Qaeda in Northern
17 Europe was somewhat well-defined. We know what they wanted
18 to do, attack those who were supporting the war in
19 Afghanistan or Iraq. But even then we don't have a location
20 or a date. It's not the government's burden and not your
21 concern.

22 Now, evidence of the agreement in this case comes
23 in a number of places. This is Syed Haris Ahmed's written
24 statement from March 18th, 2006. And he says, after talking
25 about how easy it is to get weapons in the United States:

1 The main conversations in Canada were related
2 to going to Pakistan to obtain military-style jihad
3 training. One brother -- Syed Haris Ahmed --
4 should go ahead and set up housing and make
5 arrangements and then the others could come over.

6 There is the agreement they entered into in Canada,
7 and they tried to follow through. We don't need to show
8 success, but you saw all sorts of planning.

9 Then in a chat between again Syed Haris Ahmed and
10 Abu Umar, Khan:

11 What happens after camps, Ahmed asks. Does it
12 cost much?

13 And then Khan indicating where the destination
14 was, Well, it doesn't cost much, but then they
15 launch you into Kashmir, i.e., where LeT fights.

16 This was their agreement, this was their plan: Get
17 with LeT, get to Kashmir, and get into some fighting.

18 I want to shift to attempt, the other way in which
19 it is alleged that the defendant committed his crimes.

20 Instead of calling people co-conspirators, we call
21 them aiders and abettors, people who assist in the
22 attempt. We need to show, the government needs to show, you
23 need to find beyond a reasonable doubt that the defendant and
24 his aiders and abettors intended to provide material support,
25 and in fact they took a substantial step toward providing

1 material support. Not just an agreement, not just an
2 understanding, but someone did something, a step that, unless
3 it was frustrated, would have tended to result in their
4 goal.

5 Meaning Syed Haris Ahmed buys a plane ticket, flies
6 to Karachi, meets with Abu Umar. But for his turning back on
7 his heels, chickening out, they would have achieved their
8 plan. Syed Haris Ahmed would have gone to a camp.

9 So attempt, again this same intent, this
10 understanding, but a step forward, not just the agreement,
11 something more.

12 You are still liable for all the actions of your
13 aiders and abettors. If you are in the crew that is making
14 the attempt, it doesn't matter who it is that takes that step
15 forward. If you are in the mix, again, all for one and one
16 for all.

17 Finally, I promise, last principle of law, "and"
18 means "or." The Judge will instruct you about what the
19 government needs to prove in the disjunctive. The government
20 needs to prove that the defendant provided personnel or
21 property, that it was in support of a conspiracy to commit
22 terrorist acts abroad or terrorist acts locally.

23 But if in your deliberations you tried to reconcile
24 the Court's directions with the indictment -- and you will be
25 given a copy of the indictment -- you are going to see "and"

1 all over it. That's how we charge things. And for reasons
2 that are beyond me, "and" means "or" in an indictment.

3 And I say this only so you don't get hung up in
4 deliberations. You will hear "or" from the Judge, and that's
5 the law. The indictment says "and," but the government only
6 needs to prove in the disjunctive, one of the options, not
7 all of the options.

8 Now, we have talked about how the defendant and his
9 co-conspirators, his aiders and abettors, provided material
10 support, conspiracy, attempt. Now, I want to talk about the
11 what, what did they provide, the personnel and property for
12 Counts One and Two, and then for Counts Three and Four, the
13 LeT count, people alone.

14 Let's start with the defendant. How do we know
15 that the defendant intended to provide himself, that he was
16 part of the mix?

17 We have any number of exhibits. You heard very
18 early on when Agent Williamson was on the stand about the
19 defendant's interest in December 2001 to join the Taliban:
20 My name is Ehsanul Islam Sadequee. I am writing to you
21 because I need to go Afghanistan to join the Taliban. Thus
22 begins our story, December 2001.

23 We fast forward to April 2005. The defendant,
24 chatting with Aabid Hussein Khan and Syed Haris Ahmed -- no
25 LOLs here -- the defendant suggests, the defendant suggests:

1 We should be with LT, Lashkar-e-Tayyiba, given what they are
2 doing, fighting against the Hindus, et cetera.

3 The defendant wants to provide himself to the
4 Taliban, he want to be with LT, and ultimately, of course,
5 this same chat from April 21, 2005: Our main last goal is to
6 get with the students. Let's train under the Taliban --
7 under LeT, let's be under their direction and control, learn
8 how to use the guns, about how to make the assaults. But of
9 course, our main last goal, circling back to the desire
10 expressed in December 2001, is to be with the students.
11 Mountain Hills National Park is the plan all along.

12 The defendant a day later expresses his frustration
13 when it looks like the plans aren't going to move as
14 quickly: Man, I want to go to Curry Land by July at the
15 latest. Not Syed Haris Ahmed needs to go, not Zubair Ahmed
16 should be recruited by Syed Haris Ahmed. I, the defendant,
17 want to go to Curry Land. Not to Bangladesh to get married,
18 Curry Land to get the training.

19 And then if we move into September and October, we
20 have this. This is an excerpt from Government's Exhibit
21 247. It's the last page of this visa application that has to
22 be presented, and it says right here: Application for
23 visitor's visa must be submitted personally. This is from
24 the Swedish Embassy in Dhaka, Bangladesh. This was found on
25 Younis Tsouli's computer.

1 If we think through all the players in the mix with
2 Al-Qaeda in Northern Europe, there is only one who was in
3 Dhaka who was trying to get to Sweden. The defendant was
4 trying to provide himself, personnel, to Al-Qaeda in Northern
5 Europe. He needed to get from Dhaka to Sweden to join up
6 with the group.

7 Now, beyond the defendant, we know he conspired
8 with Haris Ahmed, Azdee, James and Khan, Aabid Hussein Khan,
9 to provide yet more people. Those four people.

10 This is an excerpt from the Mother's Day e-mail
11 written by Syed Haris Ahmed but distributed by the
12 defendant. You will remember the chat where he uploads it on
13 YouSendIt to Khan, and Khan scolds him for putting something
14 this sensitive on a public server like that.

15 Ahmed writes: This is a message regarding the
16 Mother's Day celebration that we, that we are planning in the
17 Curry Place and Beyond Restaurant, meaning Afghanistan.

18 So we know that the defendant Syed is trying to
19 provide himself as personnel, was conspiring with
20 Haris Ahmed, Azdee, James and Khan, all five of them, to get
21 to Pakistan.

22 Again, we don't need to show that they were
23 successful. There's no evidence that Azdee made it to
24 Pakistan. I'm not arguing that. No evidence that James did.
25 We know Khan did. Khan met with Syed Haris Ahmed in

1 Pakistan.

2 Saajid and Hamzah, May 2005. The defendant
3 conspired with these two so they could provide themselves to
4 violent jihad, one of them here and one of them wherever it
5 was Hamzah was trying to go. We don't need to show where he
6 tried to go.

7 This is what the defendant wrote to Saajid, the
8 17-year-old American: Saajid, you have the capacity of
9 fulfilling your largest obligations in your native land. Our
10 native land, here in the United States. Not blowing himself
11 up in Pakistan or in Israel. Here. No LOLs here, no smiley
12 face, LOLZ. This is a private message between the defendant
13 and Saajid. It's not a public forum. This is where one gets
14 deliberate before one writes. It's not realtime with typos
15 or anything like that.

16 The defendant goes on: I know that the brothers
17 are looking for people like you, Americans, Muslims, but at
18 the same time they can disappear into a kaafir assembly, if
19 you get what I mean.

20 Once you get to school where you can be trained how
21 to fulfill your obligations, how to shoot arrows, make
22 traps -- now we are getting into code here -- when you are
23 there you will find more people and discuss with those in
24 authority who have experience.

25 This is the defendant conspiring with Saajid,

1 conspiring with Hamzah, so that they could provide
2 themselves. He's helping recruit them into violent jihad,
3 and one of them is here in the United States.

4 Now, there is more to this particular story. This
5 is the chat I mentioned that was found on defendant -- on
6 Aabid Hussein Khan's computer, Zoro, and then Khubayb, the
7 defendant, in reference to the whole Saajid exchange. And I
8 have highlighted some areas here.

9 And you will remember this. We went through
10 this. There were actual excerpts from Saajid's private
11 messages that the defendant had pasted in here where he
12 talked about being a 17-year-old convert, et cetera.

13 So Zoro, presumably Aabid Hussein Khan, said: I'm
14 not so sure that Saajid should go to Curry Land with or
15 before us. That is their plan, we are going to Pakistan.

16 So defendant: Give him something to study. Not
17 how to be a good Muslim, not, you know, the shots you need to
18 get before you go to Pakistan. Issues about martyrdom and
19 operations, killing women and children. This is the
20 individual that the defendant described as being useful
21 getting into kafir assemblies, a football game, church
22 service.

23 And finally Aabid Hussein Khan concludes: He,
24 Saajid, is an asset to us. He's a tool, he's a weapon.

25 No LOLs in this chat. You can look at it. It's

1 Government's Exhibit 142. You will have it. At no point
2 does the defendant say, Whoa, whoa, you are talking about the
3 United States. That's where I was born. Some of my family
4 lives here. No, no, no, no, no, no. We need to get this guy
5 overseas and he will just kill some people I don't
6 know. That's not in there.

7 Finally, the last group of personnel that the
8 defendant conspired with to provide support for violent jihad
9 is Tsouli, Bektasevic, and Bektasevic's associates. This is
10 the Al-Qaeda in Northern Europe. And you have read the
11 chats. You can read them again, 233, 234, it's all spelled
12 out what their plan is. You have seen the video that
13 Bektasevic made after he discussed it with the defendant and
14 Younis Tsouli.

15 We know these people were conspiring. You will
16 have the bayaan. It's not particularly helpful in that
17 format, but you have got a translation of it. That's
18 Exhibit 241-A, the announcement released on September 11,
19 2005, at 8:46 a.m., precisely when the first jet crashed into
20 the World Trade Center.

21 These guys don't kid around. They understood the
22 symbolism of that. It's printed on the bottom of the bayaan,
23 announcing the formation of the organization to which the
24 defendant belonged.

25 And if there is any question about whether the

1 defendant belonged, we have Government's Exhibit 233, a chat
2 between the defendant, Mirsad Bektasevic before he made it to
3 Bosnia, and Younis Tsouli.

4 And Mirsad says: Guys, I need to know this. Are
5 we a jumat, are we a group, are we NR, are we Al-Qaeda in
6 Northern Europe?

7 No, question. Tsouli says: Max, of course we
8 bloody are.

9 Keep reading the chat. The defendant joins in soon
10 thereafter: We are all one community. We are one.

11 The defendant conspired with Tsouli, Bektasevic,
12 Bektasevic's associates, and perhaps individuals in
13 Bangladesh.

14 He goes on in the chats to say, I have got some
15 brothers from Dhaka who will want to come check out what we
16 set up in Sweden, presumably stocked with all the armaments
17 we see in the video.

18 Now, that's personnel. That's personnel to the
19 various conspiracies to commit terrorist acts, that's
20 personnel to LeT. Syed Haris Ahmed and Ahbid Khan talking
21 about LeT.

22 We also have property. And the property in this
23 case, very simple, is the casing videos. It's the casing
24 videos.

25 Now, what's frightening about these casing videos

1 is not that the Masonic Temple is in them. It's not that
2 they were professionally done. They are not. It's not a
3 high-gloss video that you would see on a National Geographic
4 presentation or something on Nova. It's the message that
5 they send that we are in your backyard.

6 Osama Bin Laden can't come into the United States,
7 but Saajid can operate in the United States, the defendant
8 and Syed Haris Ahmed can move around freely, and they can get
9 this close to the World Bank. You can't read it right here,
10 it says the World Bank Group on the side. They can get this
11 close to a fuel tank farm. They actually got a lot closer to
12 the Capitol, but this is the video of the Capitol that was
13 found on Younis Tsouli's computer.

14 All four of these videos were found on
15 Younis Tsouli's computer. Two of them, the top two, were
16 also found on Aabid Hussein Khan's computer. Younis Tsouli,
17 working closely and directly with Al-Qaeda in Iraq,
18 recruiting people, getting them through Syria in Al-Qaeda in
19 Iraq, releasing their beheading videos, their IED videos.
20 Ahbid Hussein Khan, the camp facilitator, that's where these
21 videos ended up. Not with Azdee stuck in Canada, or with
22 James.

23 And if there is any question about what these
24 videos were meant for, we have Syed Haris Ahmed's statement
25 from March 15th, the day he finally revealed that he still

1 had the camera that made them, and after denying for several
2 interviews that it was the defendant who made them, his claim
3 was it's defendant's camera, defendant's camera. Finally on
4 March 15th, Well, actually it was my camera, it's at my
5 parents' house.

6 He says in his statement: I went to Washington,
7 D.C., with Ehsanul Shifa Sadequee. The purpose of our trip
8 was to make surveillance or scoping videos of various sites
9 in Washington, D.C. We then planned to send these videos to
10 the jihadi brothers overseas. Khan, Tsouli.

11 And we know how they got there. The defendant
12 walked into Raksha, put them on a computer there, and sent
13 them, Jimmy's 13th birthday and volleyball party --
14 volleyball contest. You saw the chats when he transferred
15 them.

16 And what does he say about them? This is the
17 chat. You can look at it, Government's Exhibit 117, April
18 26, 2005. Khan says: I love reading this type of
19 material. He's referring to the World Bank video, the first
20 one that went across, Jimmy's 13th birthday.

21 Then the defendant says: If you think it will
22 raise the morale and incite the football team, then show it
23 to them. That's not the Atlanta Falcons. It's not a soccer
24 team he's talking about. It's the crew that's part of the
25 plan, it's the people who want to support violent

1 jihad. Show them the video if you think it will raise morale
2 and incite the team.

3 You heard Omer Kamal talk about what would happen
4 when they watched these videos, these recruiting videos, that
5 they would get pumped up. They would watch the last will and
6 testament of some guy before he blew himself up, killing U.S.
7 soldiers. That's what this is about. That's what the
8 defendant was doing.

9 And what did the defendant hope to do with these
10 videos? This is an excerpt from Government's Exhibit 234,
11 the chat between the defendant and Azdee in Canada. Azdee's
12 cautioning him: These videos, I don't think it's so smart,
13 because they can catch on when you were in Washington, D.C.
14 Remember the Chinese guy?

15 The defendant won't have any of that. He's a step
16 ahead. First of all, the release he's going to have -- and
17 this is in reference -- this date, by the way, this is when
18 Mirsad Bektasevic is arrested. The defendant doesn't know it
19 yet. He's talking about the video that he's going to release
20 with Tsouli and Bektasevic, with Bektasevic's training
21 footage, the arsenal, out in the woods blowing something up,
22 along with the Washington, D.C., videos.

23 Defendant says: It's going to make them piss. It
24 will awaken them.

25 Azdee says: No, no, no, they will be able to tell

1 when you were in Washington, they will put two and two
2 together.

3 No, defendant says: The thing is we are not going
4 to show those clips. Just some random buildings from the
5 area.

6 World Bank, Masonic Temple, fuel tank farm, you
7 can't tell what day those videos were made. There is no
8 HAZMAT truck driving by. You don't have the two Capitol
9 security guards in those videos.

10 Just some random buildings from the area. There
11 won't be bait. There's that word again. Don't worry, I know
12 what I'm doing is illegal, but I won't get caught.

13 He goes on, in case there was any doubt in your
14 mind that the defendant was planning with others something to
15 happen in the United States: You know a good thing about it
16 is? Nothing is going to happen there -- where the videos are
17 going to be released, the United States, he's in Bangladesh
18 at the time, the defendant is -- for at least another good
19 year.

20 So here is the impact they will have. People
21 aren't going to die, but look what's going to happen: They
22 increase their security, they are only tiring their
23 resources, losing money, will start to get bored with all the
24 high alerts, the long lines at the airport for security
25 checks. They become accustomed to it, they start joking

1 about the alerts, they let their guard down, and year from
2 now, who knows what happens.

3 Not letting their guard down in Afghanistan or
4 Pakistan, but here where Saajid could be doing his thing.

5 Now, finally -- I actually get to talk to you guys
6 twice. I start, the defendant will address you, if he so
7 chooses, and then I get to come back in rebuttal. But before
8 that, I want to talk a little bit about the destination of
9 the material support.

10 We talked a lot about the defendant's plans with
11 others for Counts One and Two, whether it was LeT or Al-Qaeda
12 in Iraq or Al-Qaeda in Northern Europe or the
13 Taliban. Counts Three and Four are a little more complicated
14 for the government because they are narrower.

15 And I will tell you this, the evidence is
16 overwhelming of defendant's guilt on Counts One and Two.
17 It's just there, in every chat, every communication.

18 Three and Four are more difficult counts. You may
19 well struggle over that, because the evidence that LeT was a
20 destination is less abundant than the evidence that the
21 defendant conspired with others and made an attempt to
22 provide material support to violent jihad.

23 There is nonetheless evidence, so I want to talk
24 about that.

25 Lashkar-e-Tayyiba, a designated terrorist

1 organization, designated by the United States. And there was
2 some confusing testimony, and you may hear from the
3 defendant, Well, you know, they actually changed names. LeT
4 doesn't even exist in 2005, so there can be no crime because
5 one can't join LeT.

6 But by any other name exists LeT. It hasn't gone
7 away. It changed its name because it was outlawed by the
8 Pakistani government. It remains outlawed, and it gets
9 redesignated every time it needs to be redesignated by the
10 United States.

11 It's a terrorist organization. The defendant
12 conspired with others to provide personnel to LeT. Here is
13 how we know.

14 You have seen this before. Defendant's own words,
15 April 21, 2005, in a chat with Syed Haris Ahmed and Khan, the
16 facilitator, the person who could actually get them in.
17 Defendant says: We should be with LT. His idea, we should
18 be with LT.

19 You have seen this before when Khan and Syed Haris
20 Ahmed are talking: I get in the camps and then I'm going to
21 go fight, and where is all this happening? There is not --
22 well, it could really be anywhere. It could be anywhere in
23 Pakistan, it could be in Wana, Waziristan, it could be in
24 Afghanistan. It's Kashmir that they are thinking about.

25 And you have heard the testimony from

1 Mr. Kohlmann. If you are going to go to Kashmir, LeT is your
2 ticket.

3 But we know more. We know what the plan was.
4 Syed Haris Ahmed in his March 18th statement: When I went to
5 Pakistan to receive military training in a jihad camp, I had
6 hoped to join LeT.

7 It's right there. It can't be stated more
8 clearly. And remember what I said about attempt and
9 conspiracy. The defendant doesn't need to be the one who was
10 going to get to LeT. As long as it's someone who had joined
11 the plan with him, a co-conspirator -- here Syed Haris
12 Ahmed -- or an aider or abetter. If the plan was to get
13 someone on the ground, get someone training, that someone
14 could be Syed Haris Ahmed and not the defendant. Although we
15 see in the first excerpt, the defendant himself had
16 contemplated joining LeT.

17 But we know more about the conspiracy's connection
18 to LeT. You heard Mr. Kohlmann talk about this briefly.

19 This is a letter, it's Government's Exhibit 96, and
20 it came up twice, once through Mr. McGee, the computer
21 forensics guy. And he testified that this letter was
22 modified for the last time on Aabid Hussein Khan's media in
23 early May 2005.

24 Early May 2005. Well, where does that fall in the
25 conspiracy? Well, we have seen all the chats from April, and

1 the plan as it exists in early May is Haris Ahmed will go
2 over first to be joined by Sadequee, maybe James, maybe
3 Azdee, and they will get some training in Pakistan and
4 probably end up in Afghanistan.

5 This is a letter written by, you can see at the
6 bottom, your brother in Islam, Ahbid Khan. What does it
7 say? This is from the top line: A brother who I trust is
8 getting ready to go to Pakistan, and so I thought it a good
9 time to send a letter.

10 Khan, who had already been to a training camp, he
11 discussed it in his chat with Syed Haris Ahmed, is aware of a
12 brother, he doesn't want to name names, he's aware of
13 Syed Haris Ahmed who is getting ready to go to Pakistan. So
14 let me send you guys, you training camp operators, a note.

15 He goes on to say: I was meaning to ask if you can
16 help arrange for the training of a few brothers from abroad.
17 Amongst them are nonPakistan nationals. The defendant, Azdee
18 Omani, James. I hope it can be arranged for their safety and
19 travel, accommodations met, which they will pay for any costs
20 involved in providing the protection, the protection, and so
21 on, insha'Allah.

22 We have already seen the discussions that these
23 folks had about needing to raise money because it was going
24 to cost some money to get into a training camp.

25 And finally Aabid Hussein Khan, the facilitator,

1 aware of what it takes to get into a training camp: I have
2 heard that the Pakistani government is now taking down names
3 for anyone wanting to train. To train, now he's revealing
4 what this is all about.

5 Is this the case, and is there a way around this,
6 such as lying to them, the Pakistani government, by telling
7 them that we are villagers, as the Prophet permitted the use
8 of deception in war? Of course, the war on Islam that the
9 defendant and others are joining to protect the ummah.

10 This is a letter written by Aabid Hussein Khan, and
11 he explains at the bottom how he's delivering it. He
12 actually hands the letter to someone. He says: Send any
13 response you have to my e-mail address, which is in there, or
14 tell the brother who delivered the letter what the answer
15 is.

16 So we have someone that Evan Kohlmann identified as
17 a facilitator for LeT writing a letter about one person
18 coming first to come to Pakistan, he trusts him, and then
19 others joining, some of whom are not Pakistani. That's the
20 evidence that shows that the defendant and others were
21 conspiring to provide personnel to LeT and actually took a
22 concrete step, the attempt, sending Syed Haris Ahmed to
23 Pakistan, he met with Abu Umar, and then turned back on his
24 heels.

25 That's the evidence you have seen.

1 I will come back when the defendant is done, if he
2 chooses to address you, to make a few final points. But
3 I want to repeat what I said at the beginning of the
4 closing.

5 The evidence in this case is clear, the evidence in
6 this case is overwhelming at least as to Counts One and
7 Two. The defendant conspired with others, he took concrete
8 steps with others, and in fact with the videos actually
9 successfully providing material support to violent
10 jihad. They also conspired and attempted to provide
11 individuals to LeT, to work under their direction and control
12 in a training camp in Pakistan.

13 Thank you.

14 THE COURT: All right. Mr. Sadequee?

15 MR. SADEQUEE: Good morning.

16 I would like to start by thanking you for being
17 patient with me for being so fast throughout my presentations
18 including what I was -- I'm trying to do my best representing
19 myself although I'm not a lawyer.

20 And I would also like to thank the Court for being
21 patient with me, for letting me say things during my
22 presentation myself. It's not as easy as you see in *Law and*
23 *Order*.

24 So I want to explain in this closing argument,
25 closing statement the reasons why I'm innocent and not guilty

1 of the four charges, the four crimes I'm charged with in the
2 indictment, and explain to you some of the issues I think are
3 important and necessary when examining this case concerning
4 my religion and those of other Muslims.

5 The government gave you some explanations as to
6 what the law is. The Court will after our closing
7 arguments --

8 THE COURT: Mr. Sadequee, can you pull the
9 microphone closer, please? Thank you.

10 MR. SADEQUEE: The Court will tell you on the fact
11 that certain persons who associate with each other and
12 assemble and discuss common aims and interests does not
13 establish proof of a conspiracy. That's not my words, that's
14 what the Court will be addressing when the Court explains to
15 you, the jury, what the law is.

16 The Court will also tell you that to be guilty of a
17 conspiracy, the government must prove beyond a reasonable
18 doubt that two or more people came to a mutual understanding
19 to try to accomplish a common and unlawful plan, and that --
20 so that's actually what the Court will be saying.

21 So I did not conspire. And before previously to
22 understand what conspire is, some synonyms of that are to
23 plan, design, to plot.

24 I did not conspire with anybody, neither Mr. Haris
25 Ahmed, nor Abu Umar, nor Mr. Bektasevic, nor Younis Tsouli,

1 to either engage in terrorism by killing, kidnapping or
2 injuring someone in this country or in another country.

3 I did not conspire with anybody to provide material
4 support to LeT.

5 I did not attempt -- so just to explain what the
6 word attempt means, it means to make an effort, to undertake,
7 to try. I did not attempt to provide material support to any
8 terrorist organization.

9 So let me tell you why the evidence shows that I am
10 innocent of these charges.

11 First, the D.C. videos. You have seen the D.C.
12 videos. You see that they are very amateurish and
13 useless. Anyone who wants to -- any real terrorist would
14 probably go to Google Earth and get satellite imaging of what
15 they want instead of footage from a camera, which is not even
16 a camera designed to take video for this. It's actually a
17 digital photo camera which can take very grainy video
18 footage.

19 So someone could go to Google Earth and get
20 satellite live images of locations from anywhere around the
21 world, and on the internet you could get much better
22 pictures.

23 And that's actually what terrorists do. They would
24 not go to some people who could be spies from Atlanta,
25 Georgia, as Mr. Kohlmann alluded to.

1 When I was speaking with Tsouli, Irhabi 007, and
2 the Bosnian guy, Mr. Mirsad Bektasevic, in a chat in October,
3 we had a lot of chats and discussions about what to do with
4 these videos and making a -- splicing the video, the D.C.
5 videos with some videos that Mr. Bektasevic would make and
6 how this would be a media stunt to get media attention, to
7 get -- prove something to some scholars for whatever purpose,
8 to scare people, to -- it was not to -- it was not a material
9 support to help terrorists engage in planning terrorist
10 attacks.

11 The government says I'm guilty because I conspired
12 and attempted to provide material support -- the indictment
13 alleges that I conspired and attempted to provide material
14 support to terrorists in the form of personnel. The idea in
15 the indictment is that I agreed with Haris that Haris or
16 I would personally become terrorists or will join LeT.

17 Here is why I'm not guilty of that charge. Haris
18 and I never agreed that he would go to Pakistan to join
19 LeT. He always wanted to go back to Pakistan, which he
20 always goes back and forth to Pakistan. He's lived there his
21 early years of his life. His sister is there. He actually
22 went to Pakistan, as you heard yesterday, the very month
23 after his sister had given birth to his niece. And he goes
24 to Pakistan every summer on summer break with his cousins,
25 who are his best friends, who are also on summer break in

1 Pakistan.

2 And his activities in Pakistan, other than a single
3 afternoon with Abu Umar, was nothing different from his other
4 visits to Pakistan. In fact, the most dangerous time in his
5 stay in Pakistan was perhaps in 2004, when I never met him,
6 when he actually by himself came into contact with LeT
7 commanders and LeT recruiters. The name that he gave was
8 Abu Suffian.

9 That was at a time when he neither met Abu Umar nor
10 any of these chats ever took place. I don't know him, he
11 doesn't know me. And he actually met LeT commanders, I mean,
12 and he did not join any terrorist training camp.

13 And now in 2005 he met with Abu Umar one evening
14 and never met him again. He did not attend nor visit any
15 training camps, let alone join LeT.

16 The government says or uses this phrase, the fact
17 that it was not successful does not mean -- but they ignore
18 the fact that it was not actually attempted to begin with.
19 For something to be unsuccessful, there has to be actually an
20 attempt for it to be unsuccessful. If there is no attempt,
21 of course it is not going to be successful because there was
22 no attempt to begin with. It's logical.

23 So he never attempted to attend one of these
24 training camps or any of these training camps, which are all
25 over Pakistan, which anyone can go to if they wanted to go to

1 really, as his sister, who lives in Pakistan most of her
2 life, a practicing Muslim, mentioned.

3 And also the government's expert witness,
4 Mr. Kohlmann, said that LeT has publicly their phone number,
5 their e-mail address, other contact information, that if you
6 want to join us, here, this is how. They don't have on any
7 of their websites, you know, contact Abu Umar or
8 Aabid Hussein Khan, he's our guy, if you want to join us, do
9 it through him.

10 According to the expert testimony of the
11 government's witness, they have -- it's public, these are the
12 avenues, call us, contact us, that's the way, and this is
13 public information.

14 As far as all the chats, I think the principle
15 which we have all heard is that actions speak louder than
16 words. There are all these chats, words. I think what
17 should be really looked at is what's actually done.

18 The government says there is an agreement. You
19 will see throughout many of these chats that there is
20 discussions about wanting to go to Toronto, and there is
21 disagreements. Some people want to do some things, some
22 people want to do something else. I was talking about going
23 over to Toronto, trying to get an apartment, getting a job in
24 Toronto.

25 As for what Haris actually did in Pakistan, Haris

1 went there, spent all of about a month and a half stay or a
2 month long stay, hanging around his cousins, talking to some
3 scholars. What did he actually visit? He visited Islamic
4 schools and universities. He did not visit any training
5 camps, along with all his cousins and his relatives, and then
6 came back home to Atlanta.

7 If you wanted to become a terrorist, if you wanted
8 to join a terrorist organization or camp, it seems like much
9 more attempt, regardless of whether or not it would have been
10 successful, of course, but there would have been an attempt
11 on his part trying to get into these camps, trying to make --
12 make it, make his way to these areas such as Kashmir or the
13 provinces within Pakistan which are jihad areas. He did not
14 leave his home city of Karachi. Which he did leave in other
15 respects in 2005, but he did not leave his own city.

16 The simple truth is that the reason he did not
17 attempt is because he truly, behind those words and chats,
18 did not truly intend to do what he was saying and talking
19 about and chatting online with people.

20 If he wanted to, he already met LeT
21 commanders. It's not a matter of being unsuccessful. It's a
22 matter of not wanting to attempt to join.

23 I can't be found guilty on either conspiring or
24 attempting to provide personnel to a terrorist group based on
25 that.

1 Now, in December of 2005, right when Haris is
2 coming back to Pakistan, without talking or e-mailing me or
3 telling me, I was going to Bangladesh to get married. The
4 fact that he was coming the very day after I left for
5 Bangladesh the government wants to make something out of, but
6 it's really not something.

7 Now, I went to Bangladesh. The government tries to
8 make it appear as though my getting married was a cover for
9 jihadi activities in Bangladesh.

10 Now, if you went over some of the evidence
11 provided, exhibits provided as evidence yesterday, you will
12 see that almost all of my money went on my wedding expenses,
13 a wedding which I was hoping to get married even before I met
14 any of these individuals, as my sister explained.

15 You know, I think where one spends his money, you
16 can tell a lot about a person like where he spends his money
17 or how he spends his money. Show me the money, you know,
18 says a lot about the person.

19 We should ask ourselves, if the wedding is the
20 cover and the jihad is the real intention, then how come all
21 of his resources are being spent on the wedding? And also
22 you should ask how much money is he spending on his so-called
23 jihad intentions?

24 Now, so throughout 2005, there are these chats
25 about trying to go to Pakistan. Now, when I'm in Bangladesh,

1 when I'm a stone's throw away from Pakistan -- I mean, you
2 have geographically Bangladesh, India, and then Pakistan,
3 India is, you know, where Kashmir and -- so now I'm on the
4 other side of the world, I'm a stone's throw away from
5 Pakistan, and all of the sudden you see that I'm not even
6 talking about going to Pakistan anymore then. I'm talking
7 about Sweden and Bosnia and Indonesia.

8 Now, the government has come up talking about and
9 showing you the video of Mr. Bektasevic in Bosnia, the video
10 that he made. So some points with regards to this I would
11 like to mention.

12 As the government agents have testified, I never
13 met Mr. Bektasevic in my life. There is no evidence that he
14 did -- he, Mr. Bektasevic, did anything with the video in
15 terms of giving it to other people. I mean, he had it in his
16 pocket when he was arrested.

17 Now, the chat in which -- the conversation online
18 that I had with him when we were talking, to go back to it,
19 you will see that before he offers to make these videos with
20 actual weapons, we were offering -- I offered the idea of
21 creating false images of weapons using computer graphics, and
22 then Tsouli offers, Mr. Irhabi 007, he offers the idea of
23 using toy guns.

24 That's when Mr. Bektasevic says, you know, I think
25 I'll go back to Bosnia, there is real weapons over there.

1 In fact, the first time I ever saw this video was
2 actually just a few weeks ago when the government gave us
3 material that they would be using in this trial. I had never
4 seen that video before, meaning the Bosnian video.

5 And the video is obviously very scary, so I don't
6 want to tell you actually ignore what's on the video, but
7 I do want to mention and make sure that you do know that the
8 context within which -- the surrounding information, that it
9 is necessary to note the background of this video which you
10 have seen in these chats. I never saw any of those
11 weapons.

12 I was not involved in helping them get any of those
13 weapons. I mean, he is in a war zone or a former war zone
14 and, you know, which had NATO peacekeeping forces the year
15 prior to him being arrested, peacekeeping because -- foreign
16 troops, because there is a need for peacekeeping forces, it's
17 a war zone or conflict over there.

18 Obviously I have never been there, so I can't say
19 how easy it is to access weapons, but at the time of his
20 arrest I believe he was -- Mr. Bektasevic was in his late
21 teens. So I guess it would be much more easier than in the
22 States, in America over here to get weapons.

23 I do not know where he got those weapons or -- I'm
24 not involved in any way, in any way or shape or form of
25 him -- having facilitated him getting those weapons.

1 Now, you can see in the chats with him and
2 Mr. Tsouli that everything we talked about was -- you could
3 read for yourself and see. It's a lot of just ridiculous
4 things.

5 For example, Mirsad Bektasevic was in his late
6 teens and Mr. Tsouli was in his early 20s, and myself, I'm in
7 my late teens at that period of time. I was arrested when I
8 was 19. So these chats, Mr. Tsouli and Mr. Bektasevic, they
9 decide to form a new branch of Al-Qaeda called Northern
10 Europe, Al-Qaeda in Northern Europe.

11 If you actually think about what's happening is
12 that there is two individuals who suddenly decide that
13 between them they are going to form a new jihad organization,
14 right, and it is as Mr. Kohlmann, the government's expert
15 witness, said, something to the effect that it did not exist
16 anywhere outside the minds of those individuals, meaning this
17 Al-Qaeda in Northern Europe did not exist outside of the
18 minds of those individuals.

19 And he went into the history of how -- or the
20 manner in which actual Al-Qaeda organizations are formed and
21 how they release statements from, you know, Afghanistan,
22 various leaders, and on video, on audio and so on and so
23 forth. They don't make an online post on their official
24 notepad with that heading. That's not how it's done. There
25 is formal acknowledgments and so on and so forth.

1 This is also perhaps one of the reasons why nothing
2 was ever heard of afterwards of this Al-Qaeda in Northern
3 Europe, what, this one announcement, and the end.

4 You can see in the chats with Mr. Tsouli and
5 Bektasevic on September 21st at 3:20:23, 3:21:49, 3:24:46 and
6 3:27:41 the same conversations as in the earlier chat with
7 Abu Umar and Haris, that we spent a lot of time talking about
8 who is going to be the boss, who is going to be the ameer,
9 who is in charge of communications, who is in charge of
10 operations.

11 There is a point where we call Mr. Bektasevic, who
12 is in his late teens -- actually I might be wrong about this,
13 but he was 17 when he was arrested -- we say that he's going
14 to be the field commander, and he's not -- and as the Bosnian
15 agent himself testified, that his -- the trip in which he was
16 arrested in Bosnia was the first trip that he took without
17 his parents outside of Sweden. Imagine.

18 I guess it was -- there is discussions with him, Do
19 we have a plan? Nobody agreed on anything.

20 I request that you would read particularly the
21 chats on September 21st and the 23rd of September where there
22 is these ridiculous conversations that show really there was
23 no real criminal conspiracy or a real attempt to commit a
24 crime, attempt to commit a crime.

25 Now, what these chats do demonstrate quite clearly

1 is that we were immature young guys who had imaginations
2 running wild. But I was not then and I am not now a
3 terrorist.

4 The prosecutors also spent a lot of time talking
5 about Tibyan Publications and showing you some articles and
6 books that were on the website, and then at the same time as
7 they are showing you certain cut-and-paste excerpts of what
8 they want to show, they try to claim that this case is not
9 about my thoughts and words and beliefs, not about what
10 I translate, not about my work, what I, myself, refer to as
11 True Preaching, which prior to my arrest used to be my main
12 concern.

13 They take out a couple of excerpts, cut and paste,
14 and show it to you so that you find -- show it to you out of
15 context so that you would find those words deplorable, to
16 aggravate your feelings.

17 There are a lot of books and articles on the Tibyan
18 Publications website that perhaps you would find offensive,
19 but there are also a lot of thought-provoking articles and
20 books and literature which perhaps would help ask -- help
21 promote -- help promote debates and encourage, encourage
22 thinking and reflecting.

23 If you go in the public library near your home, you
24 will probably find a lot of books and literature that you
25 might find offensive as well.

1 You might find books and literature which regard
2 Jesus as a great man and a messenger of God. You might find
3 other books that consider Him to be, having gone to
4 Alexandria, Egypt, to be a sorcerer.

5 You might find books which say that the
6 United States -- you know, about the United States of being
7 great, spreading liberty and democracy all over. And you
8 might find books that the United States is run by aliens and
9 demons from other galaxies taking over the world.

10 You might find books that the United States is a
11 land of justice and -- where justice is done and justice is
12 served. You might find books that the United States, the
13 laws are codes, such as the UCC, enslaving the people.

14 You might not agree with it all, but there is a lot
15 of thought-provoking material and controversial
16 material. These are supposed to be protected by
17 First Amendment.

18 As you heard Haris testify, Mr. Ahmed testify,
19 I spent a lot of my time trying to translate various books
20 and articles for Tibyan Publications. You might remember a
21 chat where I discussed about working and enjoyed working from
22 midnight to, I don't know, the morning working on
23 translations, and how that too actually was one of my
24 intentions, to move somewhere where I could just do that all
25 day long.

1 Now, I also want to say some things about the
2 e-mails and the chats in general. You have heard from
3 Zubair Ahmed, you heard from Haris Ahmed, you have heard from
4 Mr. Omer Kamal. One of the questions on the jury
5 questionnaire was have you met Muslims, and many of you said
6 you are not familiar with Muslims.

7 So I mean, I understand that a lot of this might be
8 very -- talking with Muslims and going over internet chats is
9 not something which you are accustomed to and our dialogue
10 and our way of conversating, the words we use, the vocabulary
11 and how we go from one language to another, using Arabic and
12 Urdu and English all at the same time, all of this is strange
13 and confusing.

14 Now, Omer Kamal mentioned how we were passing by a
15 particular Shiite mosque and how Haris and I were passing by
16 Dobbins Air Force Base, we made some comments about taking it
17 over or attacking it, and it was never ever discussed ever
18 again. This is -- this is something -- then the government
19 actually puts in the indictment that these were things that
20 were discussed, and it's just mind boggling how such things
21 can be completely taken out of context and made into
22 something that it never was.

23 But we were not terrorist conspirators. The vast
24 majority of us, Haris, I, Omer Kamal, Tsouli,
25 Mirsad Bektasevic, at the time of these chats were either in

1 our late teens or in our early 20s.

2 I guess if someone can't see the difference
3 between -- or chooses not to see the difference between -- or
4 pretends to not see the difference between teenagers or
5 early -- young men who talk -- who type faster than they can
6 think -- there is one e-mail where I'm saying think before
7 you say something and don't mix with hyper English-speaking
8 youth -- if someone wants to find such chats to read a
9 conspiracy and not to see the difference between hyper
10 English-speaking youth, I mean, yeah, someone can find them
11 guilty, ignore the difference between these people and actual
12 terrorist conspirators.

13 But I do hope that you would see that young men who
14 talk in online chats, venting their frustration, venting
15 their anger in their own ways, there is various ways of
16 speaking and having vent, blow off steam, as Omer Kamal
17 mentioned, that there is a difference between this category
18 of people and actual terrorists or those actively engaging,
19 providing material support to terrorists.

20 It should be mentioned that there is no evidence
21 that the government has shown that even the other
22 participants, meaning James and Azdee, not only did not
23 attend any training camps, did not even go to Pakistan, that
24 they did not even get a visa to go to Pakistan, despite all
25 the chats. Like I said earlier, actions speak louder than

1 words, or the absence of actions speak louder than words.

2 The two individuals who did go to Pakistan are
3 Aabid Hussein Khan and Mr. Ahmed, who are both born in
4 Pakistan, raised in Pakistan, both have accents, and more or
5 less regularly, or at least on an annual basis, going to and
6 forth from Pakistan, despite any of these chats, before any
7 of these chats.

8 Now, you might not like what I write or translate
9 about or say, but this case is not supposed to be about what
10 we think or, as the government said, you know, in the chat
11 I said I'm thinking about joining LeT, and then possibly one
12 of the explanations of that was contemplating joining LeT,
13 contemplating. So this case is not supposed to be what we
14 think or contemplate about, even if that contemplating is
15 done outloud with others or over the internet.

16 This is supposed to be about what we did, action,
17 or the absence thereof. We did not conspire to kill or
18 kidnap or maim anybody. We did not conspire nor attempt to
19 provide material support to any real terrorist. There is no
20 evidence showing that I agreed or planned or conspired with
21 others to kidnap, kill or maim anybody.

22 The only real activity that I was involved in was
23 translating Islamic radical literature. In fact, even during
24 my imprisonment I have translated and also written articles
25 and books. I don't know if they will ever see the light of

1 day, but a lot about what's been happening in my case and
2 broad subjects. I hope perhaps, if God wills, they will be
3 released and people will be able to read it, anyone will be
4 able to read it.

5 But I'm not a terrorist. I hope that however much
6 you might disagree and dislike however strongly things that I
7 have said or translated or wrote or thought outloud about,
8 that you will be fair and that you will not convict me just
9 because -- just because of what I have said.

10 Again, I emphasize that actions do speak louder
11 than words. So however loud my words and chats may be, let
12 it not silence what actual actions that I did take.

13 I did spend all of my money in Bangladesh for what
14 the government claims was actually my cover for my real
15 jihadi activities, which I spent no money on. If you follow
16 the money or show the money, you know, that would show you a
17 lot.

18 Again, I thank you for your patience and the
19 attention and the effort that you will make to be fair, and
20 I close by saying that I hope God assists you in making the
21 correct and just decisions.

22 And we all -- I'll end by saying the Islamic
23 prayer. (*Prays softly*) All praise belongs to God, Lord of
24 all people. Thank you.

25 THE COURT: Thank you, Mr. Sadequee.

1 Mr. McBurney?

2 MR. MCBURNEY: I'm back.

3 I want to clear several things up defendant just
4 shared with you. First his age.

5 Everyone you have heard about in this case, with
6 the possible exception of Saajid who identified himself as
7 17, was an adult, 18, 19, 20, the very same age as
8 U.S. soldiers being killed in the videos that the defendant
9 and others got excited over. That's the age set we are
10 talking about.

11 We have got the warriors involved in the actual
12 armed struggles, U.S. soldiers, British soldiers, et cetera,
13 and the would-be terrorists. They are all the same age. So
14 the hyper youth the defendant describes the set he belongs to
15 is the same age as the soldiers that they are going to fight
16 against if they join LeT or Taliban, Al-Qaeda in Iraq.

17 The defendant described one of his schemes, his
18 video that would include the D.C. casing videos and the
19 training video from Mirsad Bektasevic as something that's
20 just designed to scare people. I thought that was very
21 telling.

22 That's what terrorists do, they scare people. They
23 are called terrorists because they seek to change policy
24 through fear, through terror.

25 When someone's head gets chopped off, that's the

1 means to an end: Get the U.S. out of Iraq. They know they
2 are not going to be able to take the Army head on. They
3 would lose. But through terror they try to change policy.

4 So this video that the defendant wanted to release
5 with others he just said was designed to scare people. It's
6 in the chats, scare the United States so they raise the
7 security level and then they let their guard down. That's
8 what terrorists do.

9 Let's talk a little bit about Syed Haris Ahmed's
10 trip to Pakistan and what happened soon thereafter. The
11 defendant told you, argued in his closing statement -- which
12 is not evidence, just like my closing argument is not
13 evidence, I'm sharing with you the government's perspective
14 on the evidence, you decide the facts -- that really
15 Haris Ahmed went to Pakistan to see his new niece and check
16 out some Islamic schools.

17 But what you saw, Government's Exhibit 228, a chat
18 between the defendant, Waseem Mughal -- this is one of
19 Younis Tsouli's cohorts in London, arrested on terrorism
20 charges -- and Azdee, the Canadian, in early September. It's
21 after the defendant has gone overseas to Bangladesh, and
22 Syed Haris Ahmed is back here regretting that he turned back
23 on his heels and declaring to others that the third is not
24 broken for me.

25 The defendant is telling these other people, Let me

1 tell you what went down in Pakistan. And the expression --
2 and you will read it, I'm not giving you anything out of
3 context. You get the entirety of all these documents. The
4 government was chastised by the defendant for taking things
5 out of context. That's not the goal here. The clips that
6 you have seen are designed to give you some insight. But
7 read from start to finish these chats.

8 Through witnesses at times we would jump around
9 some of these chats. These guys were online forever talking
10 about this stuff, and we touched upon the high points. But
11 read it all. The truth will speak to you from there. It's
12 not a joke, it's not a game, it's not LOLZ. It's conspiring
13 to provide material support to violent jihad. They don't use
14 those words, but you will see what their intent was, what
15 their plans were and the steps that they took.

16 But back to Ahmed. The defendant is describing to
17 Mughal and to Azdee what Syed Haris Ahmed did in Pakistan,
18 and the defendant expresses disgust and amazement that Ahmed
19 had the chance, he met with Khan, and Khan said, Come on up
20 to Wana -- that's where we first saw Wana, what's Wana, and
21 Evan Kohlmann, Mr. Kohlmann told you it's actually one of the
22 most dangerous places on earth, unless of course you have a
23 contact like Khan.

24 Khan was in Wana, and he came down to Karachi to
25 meet with Syed Haris Ahmed, and then Syed Haris Ahmed

1 chickened out. Not that he didn't intend to do it. There
2 wasn't this, Oh, what was Ahmed doing? Did you know Ahmed
3 went to Pakistan? I didn't know that. What was he doing
4 there?

5 He knew exactly what the plan was, and he discusses
6 it with Mughal and with Azdee, and they expressed revulsion
7 at the fact that Ahmed blew this opportunity, didn't follow
8 up with Khan. Khan said, Come on, I will meet you here, now
9 just get up to Waziristan, get to Wana, and I will get you
10 in.

11 Defendant's words, not mine, not out of
12 context. Read 228.

13 Bektasevic, an adult, a terrorist. The defendant
14 proposed to you in his closing that he really didn't know
15 what Bektasevic was doing there, he didn't know the guy,
16 never met him, wasn't quite sure what was going on. Again,
17 his own words undercut his position. Now when he's on trial,
18 his liberty is at stake, he tells you, I don't know much
19 about it, I just translate for Tibyan.

20 Read the chats. Read the chats from October 15,
21 October 16, just before Bektasevic is arrested. They are
22 talking about a silencer. Hey, how that's silencer work? It
23 sounds like you are farting. What about you are working on
24 Al-Qaeda traps, the big kind, and he talks about detonators
25 and this and that.

1 The defendant didn't have his hands on these
2 things, but he knew what was going on, and you can read about
3 the plan.

4 The defendant is pleading with Bektasevic to get
5 back to Sweden. I need to get to Sweden, it's hot here in
6 Bangladesh. Not temperature hot; arrests, crackdowns. You
7 will see the phrase, a severe boiling crackdown. Defendant's
8 words, no LOLZ. There's trouble here in Bangladesh, I need
9 to get out. When are you going to get back to Sweden?

10 And Bektasevic says, All in due time,
11 brother. I need to finish what I'm doing here.

12 And you saw what they were doing there, you saw
13 effectively the lab they had in that kitchen where they were
14 rolling out the plastic explosives, getting it ready to
15 travel. They can put it in a suitcase if it's all
16 flat. They had their bomb belt, they got their supplies, and
17 the plan, as it's discussed by the defendant and
18 Mirsad Bektasevic is to get together in Sweden.

19 It's not pie in the sky. Someone did get a visa
20 application, a visa application from Bangladesh to Sweden,
21 not from the United Kingdom to Sweden, not Pakistan to
22 Sweden, but Bangladesh to Sweden.

23 What Evan Kohlmann said about Al-Qaeda in Northern
24 Europe as the reason why no one heard about it is that it
25 hadn't had a chance to make a name for itself. The way to

1 get on the map isn't just do a bayaan. It's by doing
2 something. Getting a bomb done, explosives and silencers,
3 and then actually doing something.

4 Of course Al-Qaeda in Northern Europe
5 disappeared. They got caught before they could do
6 something.

7 And that's what this work is all about. The goal
8 is to catch the terrorist before he flies the plane into the
9 building, before the backpack is full of that plastic
10 explosive and Saajid has gotten into some kafir assembly here
11 in the United States. The purpose is to stop people before
12 they get that far.

13 There has to be an agreement and in this case
14 plenty of concrete steps, but no government is obligated to
15 wait until the fuse is actually ticking, someone has turned
16 that little lemon egg timer you saw them build, so it's tick,
17 tick, tick, okay, now we can arrest them.

18 Actually if they turned the fuse, it's a concrete
19 step, it's a different crime. You blow up the bomb, that's a
20 different crime, and it's not what the defendant is charged
21 with.

22 The defendant, as I said, chastised the government
23 for taking things out of context. I ask you, one, as I just
24 said, read the whole document.

25 But more importantly, think about some of these

1 things. Take the Saajid private message that the defendant
2 wrote. No hyper youth at this time. A deliberative process,
3 wrote the e-mail, sent it, not realtime, not typing faster
4 than he's thinking.

5 Ask yourself what possible context could you put
6 this in that could be construed favorably for the defendant,
7 that it's just mere speech? What possible -- if you come up
8 with one and it's reasonable, I guess maybe that's reasonable
9 doubt.

10 I submit to you that for any number of the
11 defendant's communications, there isn't that context you can
12 put it in and say, Oh, now I understand it, he's just a kid,
13 he's just joking around, they didn't mean any of this.

14 How do we know they didn't mean any of this? I'm
15 going to skip around these slides a little bit. I talked
16 about this in opening, consciousness of guilt, things that
17 you can see from evidence that indicate that the defendant
18 was aware that what he was doing was criminal, not a game.

19 One example is code. Now, I don't want this to be
20 misconstrued, not code where you would replace A with Z and
21 B with Y, but just different words so that if someone is
22 doing a word search because the government gets a hold of an
23 e-mail and they say is anyone asking about Iraq, search for
24 Iraq, it says Two Rivers. Instead of writing jihad, you
25 write J or G-had.

1 If it's fun and games, just go ahead and write
2 it. You could say we are just kidding around. Yeah, I wrote
3 about jihad either because I'm a translator of these
4 fundamental Islamic texts, or I'm just kidding around.

5 There was a discussion about moving offline. If
6 the defendant was just having a game with his friends, then
7 why would there be things like this? This is from the
8 Virgin Mary chat. It was attached to an e-mail that the
9 defendant sent to Syed Haris Ahmed: Read this all
10 urgently. Azdee is J. Hey, I figured out a plan to get into
11 Pak Land without being suspected

12 Defendant: Whoa, is it okay to say this over MSN,
13 you have got a plan? We are talking about violent jihad
14 here. Don't say it on MSN because the wrong person might see
15 it. Not meaning the defendant's mother. Law
16 enforcement. Is it okay to say over MSN or should we go
17 offline, private message, somewhere more secure?

18 Azdee goes on: Marriage is the only way I see as a
19 way to get in there.

20 Defendant says: Yeah.

21 Briefly on marriage. The defendant married
22 Happy Shahnaz, no question about it. You saw pictures,
23 smiles, beautiful outfits. Some money was spent on the
24 wedding. The defendant's money? I don't know. There is no
25 evidence that it was his money. The father's money, Happy's

1 father's money? I don't know. That's not what this case is
2 about. We don't contest that the defendant got married.

3 But we also show you through the chats that after
4 he was married, the defendant was trying to figure out how he
5 could get his wife to Sweden as well. In those chats I'm
6 asking you to read, Yeah, I'm coming to Sweden. I want to
7 bring my wife too. How do we get her in? She's not a U.S.
8 citizen.

9 Or the chats with Khan: If you are going to get us
10 a house somewhere, a safe house in Pakistan, it's got to have
11 room for my wife too. It's part of the equation. Not that
12 she's a co-conspirator. The wedding is a *fait accompli*.
13 He's getting married.

14 It may well be an excellent cover to get into
15 Pakistan. You see a chat where he's writing to the Pakistani
16 Embassy in Dhaka saying, Hey, I may need to go on a honeymoon
17 or something after I get married as a way to get into
18 Pakistan.

19 The wedding was real. I don't mean to belittle it
20 in any way. I'm sure it was a wonderful event for the
21 defendant and his wife. It has nothing to do with the rest
22 of what he was doing in his life.

23 False cover. Why send the casing videos to
24 Aabid Hussein Khan in Jimmy's 13th birthday and volleyball
25 contest if this is all fun and games? Why cover it up that

1 way, and lock it?

2 Why use Dannymoore1126@yahoo.France? You remember
3 those e-mails that Syed Haris Ahmed sent to the defendant:
4 The dogs came to me. Not the FBI, the dogs. I was weak,
5 I revealed some things. It's not a game. He's afraid of
6 what happened.

7 And the defendant's response is particularly
8 telling: What on earth did you tell him? What did you tell
9 them? I need to know so that if they come after me, our
10 stories can mesh. If there are any discrepancies, we could
11 be put away for longer.

12 We don't put people away for childish games. We
13 put people away, find them guilty because they conspire with
14 others and attempt with others to provide material support
15 for terrorism.

16 Smuggling. If it's a game, why does the defendant
17 have an encrypted CD and the very map of Washington, D.C.,
18 hidden in his luggage, not in open with the clothes, but in
19 the compartment behind?

20 Why is there lying? Why did the defendant tell the
21 FBI, I went to Canada alone. Why not say, I went to Canada
22 with Syed Haris Ahmed, we met with these guys. It was just
23 talk.

24 Why did Syed Haris Ahmed when interviewed initially
25 upon returning from Pakistan say, I visited my uncle,

1 Azdee Omani, just visiting friends? Why does he lie in the
2 interviews about whose camera it is? Why does he withhold the
3 script form e-mail account?

4 Finally, destruction of evidence. Why does
5 Syed Haris Ahmed destroy the thumb drive with the casing
6 videos? After the first interview, why does he rush home and
7 burn texts and books?

8 And why this? This is the language I was talking
9 about. These are two excerpts from the Danny Moore e-mails
10 from the defendant, his responses: Send me a detailed
11 account of what took place. If they find discrepancies, they
12 will take us both for longer and worsen. No LOLZ or a wink
13 or anything like that.

14 This is not a case about the defendant's beliefs or
15 his ideas or hyper youth. It's about that, that bomb belt,
16 physical concrete things, actions the defendant took, going
17 to Bangladesh, meeting these people, entering into
18 agreements, recruiting people. That's what the case is
19 about.

20 It's about this statement from Bektasevic about how
21 these weapons are going to be used, how we are planning, how
22 everything is prepared.

23 It's a case in which the defendant conspired with
24 others and attempted with others to provide material support
25 to terrorist groups to include LeT.

1 The evidence in this case is clear. It doesn't
2 matter whether the defendant hated America or loved
3 America. It matters what he did. He broke the law, and he
4 needs to be held accountable.

5 I ask you to go back and deliberate and return a
6 verdict that speaks the truth in this case, which is a
7 verdict of guilty as to Counts One, Two, Three and Four.

8 And should you have any questions as you
9 deliberate, you should feel free to address them to the
10 Court.

11 Thank you.

12 THE COURT: Thank you, Mr. McBurney.

13 We have been going for two hours. My charge will
14 take half an hour or so. Would you like to take a short
15 break before we do the charge?

16 You will see when you return -- retire to the jury
17 room this time that I have for you ordered lunch and it's
18 available for you. I would suggest that you wait until after
19 the charge, and then as you are getting settled to begin your
20 deliberations, you can have lunch then.

21 Again, the case is not yet to be deliberated
22 because you don't have my charge. We will take a ten-minute
23 break and be back at 20 after.

24 (In open court without a jury present:)

25 THE COURT: Just one reminder. As I told you, it's

1 my practice with respect to the three alternates, which are
2 Mr. Riescher, Ms. Dervan and Ms. Thomas, that after I send
3 them back and get your -- to see whether there are any
4 objections to the charge as I gave it, I tell them not to
5 deliberate when we are done with our discussion, then I call
6 the three alternates back.

7 And I tell them that they are free to go, but they
8 cannot discuss the case until they hear that the case is
9 concluded because they may be called back in the event that
10 we need them. But I don't make them stay in the courthouse
11 while the deliberations are going on, although they are told
12 they can't talk about the case in the event that we do need
13 them.

14 Is there any objection? I don't think there was in
15 the pretrial conference. I want to make sure there is no
16 objection to that process.

17 MR. McBURNEY: No, sir.

18 MR. SADEQUEE: No objection.

19 THE COURT: All right. Anything we need to discuss
20 before we take our short break?

21 MR. McBURNEY: No.

22 MR. SADEQUEE: No.

23 THE COURT: All right. We will be in recess.

24 (A recess is taken at 12:13 p.m.)

25 -- -- --

1 (In open court without a jury present at
2 12:26 p.m.):)

3 THE COURT: Anything we need to discuss before we
4 bring the jurors back in?

5 MR. McBURNEY: You may have touched upon this. The
6 indictment has been redacted. Are you going to -- one, for
7 the record, I want to make it clear that a few paragraphs
8 were removed in consultation with the defense, and then two,
9 I was just inquiring whether you would again be giving the
10 redaction instruction?

11 THE COURT: All I was going to say is that three
12 paragraphs have been redacted, 39, I guess part of 40, and
13 part of 41. I'm going to say that I have decided with the
14 agreement of counsel that those contained extraneous matters
15 and that I have had them removed.

16 MR. McBURNEY: And all of 42.

17 THE COURT: Okay. So it's all of 39?

18 MR. McBURNEY: Yes.

19 THE COURT: All of 40, and all of 42?

20 MR. McBURNEY: And part of 41.

21 THE COURT: Okay. Is that explanation acceptable
22 to everyone?

23 MR. SADEQUEE: Yes.

24 MR. McBURNEY: Yes.

25 THE COURT: All right. Anything else we need to

1 discuss before we bring the jurors in?

2 MR. MCBURNEY: No, sir.

3 THE COURT: All right. Bring them in, please.

4 (In open court with a jury present:)

5 THE COURT: Ladies and gentlemen, you have heard
6 all of the evidence and you have heard the arguments of the
7 parties. It's now my duty to instruct you on the rules of
8 law that you must follow and must apply in deciding this
9 case.

10 When I have finished, you will go to the jury room
11 and begin your discussions or what we often call your
12 deliberations. It will be your duty to decide whether the
13 government has proved beyond a reasonable doubt the specific
14 facts necessary to find the defendant guilty of the crimes
15 charged in the indictment.

16 You must make your decision only on the basis of
17 the testimony and other evidence presented here during the
18 trial, and you must not be influenced in any way by either
19 sympathy or prejudice for or against the defendant or the
20 government.

21 You must also follow the law as I explain it to
22 you, whether you agree with that law or not. And you must
23 follow all of my instructions as a whole; that is, you may
24 not single out or disregard any of my instructions on the
25 law.

1 The indictment or formal charges against any
2 defendant are not evidence of guilt. Indeed, every defendant
3 is presumed by the law to be innocent.

4 The law does not require a defendant to prove their
5 innocence or to produce any evidence at all. And if a
6 defendant elects not to testify, you should not consider that
7 in any way during your deliberations.

8 The government has the burden of proving a
9 defendant guilty beyond a reasonable doubt, and if it fails
10 to do so, you must find the defendant not guilty.

11 Let me define for you what reasonable doubt
12 means. While the government's burden of proof is a strict or
13 heavy burden, it is not necessary that a defendant's guilt be
14 proved beyond all possible doubt. It is only required that
15 the government's proof exclude any reasonable doubt
16 concerning the defendant's guilt.

17 A reasonable doubt is a real doubt based upon
18 reason and common sense after careful and impartial
19 consideration of all the evidence in the case. Proof beyond
20 a reasonable doubt, therefore, is proof of such a convincing
21 character that you would be willing to rely and act upon it
22 without hesitation in the most important of your affairs.

23 If you are convinced that the defendant has been
24 proved guilty beyond a reasonable doubt, say so. If not
25 convinced, say so.

1 As I told you before, you must consider only the
2 evidence that I have admitted in the case. The term evidence
3 includes the testimony of the witnesses and the exhibits
4 admitted in the record.

5 Remember that anything the lawyers said is not
6 evidence in the case, and anything the defendant said when he
7 was acting in his capacity as his own lawyer, such as
8 questions he asks, arguments he made, and any of his
9 responses to the Court, are not evidence.

10 It is your own recollection and interpretation of
11 the evidence that controls. What the lawyers said and what
12 the defendant said when he was acting as his lawyer is not
13 binding upon you.

14 Also you should not assume from anything I may have
15 said that I have any opinion concerning any of the issues in
16 this case. Except for my instructions to you on the law, you
17 should disregard anything I may have said during the trial in
18 arriving at your decision concerning the facts.

19 In considering the evidence, you may make
20 deductions and reach conclusions which reason and common
21 sense lead you to make, and you should not be concerned about
22 whether the evidence is direct or circumstantial.

23 I told you earlier that direct evidence is the
24 testimony of one who asserts actual knowledge of a fact, such
25 as an eyewitness. Circumstantial evidence is proof of a

1 chain of facts and circumstances tending to prove or disprove
2 any fact in dispute.

3 Because that is so abundantly clear, let me use an
4 example to illustrate the difference between the two.

5 I happen to like to fish on a river in north
6 Georgia. There are a number of times when I go down in the
7 morning that there is one particular person who I see on the
8 other side of the river, and he's there in waders and he has
9 got his vest on and he's got a pole in his hand and he's
10 casting out to the water.

11 I see him, I'm an eyewitness to what he's
12 doing. That's direct evidence that somebody that morning has
13 fished and is fishing in the river.

14 But sometimes on my side of the river, there is a
15 little sandy place where I stand. I will go down and take --
16 for example, the days I go down after a rain that evening, I
17 will look in the sand and I will see very fresh imprints of
18 what is clearly a wader, I will see little pieces of leader
19 that have been discarded there in the sand, sometimes I will
20 see a lure or a fly, and all of that looks fresh to me.

21 That is circumstantial evidence that somebody that
22 morning had been fishing in the river. It's not direct
23 because I didn't see them, but it's a number of facts that
24 lead to a conclusion.

25 The law makes no distinction between the weight

1 that you may give to either direct or circumstantial
2 evidence.

3 When I tell you that you must consider all the
4 evidence, I don't mean that you have to accept all the
5 evidence as true or accurate. You should decide whether you
6 believe what each witness had to say, and how important that
7 testimony was.

8 In making that decision, you may believe or
9 disbelieve any witness, in whole or in part. Also the number
10 of witnesses testifying concerning any particular dispute is
11 not controlling.

12 In deciding whether you believe or do not believe
13 any witness, I suggest that you ask yourself a few questions:

14 Did the witness impress you as one who was telling
15 the truth?

16 Did the witness have a personal interest in the
17 outcome of the case?

18 Did the witness seem to have a good memory?

19 Did the witness have the opportunity and ability to
20 observe accurately the things he or she testified about?

21 Did the witness appear to understand the questions
22 clearly and answer them directly?

23 Did the witness's testimony differ from other
24 testimony or other evidence?

25 You should ask yourself whether there was evidence

1 tending to prove that a witness testified falsely concerning
2 some important fact, or whether there was evidence that at
3 some other time a witness said or did something, or failed to
4 say or do something which is different from the testimony the
5 witness gave before you during the trial.

6 In making that evaluation, you should keep in mind,
7 of course, that a simple mistake by a witness does not
8 necessarily mean that the witness was not telling the
9 truth. The significance of the inconsistency may depend on
10 whether it has to do with an important fact or with only an
11 unimportant detail.

12 The fact that a witness has been convicted of a
13 felony offense is another factor you may consider in deciding
14 if you believe that witness.

15 As I told you once before, Mr. Ahmed's conviction
16 should not be used as evidence that the defendant is guilty
17 of the offenses with which he is charged. You will be
18 required to consider only the evidence presented in this
19 trial to determine if the defendant is guilty or not guilty
20 of the offenses charged in this case.

21 The testimony of some witnesses must be considered
22 with more caution than the testimony of other witnesses. In
23 this case the government called Mr. Zubair Ahmed, a witness
24 who has been promised that he will not be charged or
25 prosecuted. The government also has called as one of its

1 witnesses Mr. Syed Haris Ahmed, a person named as a
2 co-conspirator in the indictment with whom the government has
3 entered into a -- I'm sorry, who has been named as a
4 co-conspirator in the indictment.

5 Where there has been an agreement reached with a
6 witness that affects the exposure that that witness has, you
7 may consider that. A witness who hopes to gain more
8 favorable treatment may have a reason to make a false
9 statement because the witness wants to strike a good bargain
10 with the government. And that would apply to both
11 Mr. Zubair Ahmed and Mr. Syed Haris Ahmed.

12 So while witnesses of these kinds may be entirely
13 truthful when testifying, you should consider such testimony
14 with more caution than the testimony of other witnesses. And
15 of course, the fact that a witness has pled guilty to a crime
16 charged in an indictment is not evidence in and of itself of
17 the guilt of any other person, as I have explained with
18 respect to Mr. Haris Ahmed.

19 Mr. Evan Kohlmann was called as an expert witness
20 in this case. When knowledge of a technical subject matter
21 might be helpful to the jury, a person having special
22 training or experience in that technical field is permitted
23 to state an opinion concerning those technical matters.

24 Merely because a witness has expressed an opinion
25 as an expert, however, does not mean that you must accept

1 that opinion. The same as with any other witness, it is up
2 to you to decide whether to rely upon it.

3 In this case I have allowed you to take notes
4 during the course of the trial, and most of you -- in fact,
5 maybe all of you at one time or another have taken advantage
6 of the opportunity to take notes.

7 You will have your notes available to you during
8 your deliberations, but you should not use -- you should use
9 them only as an aid to your memory. In other words, you
10 should not give your notes any precedence over your
11 independent recollection of the evidence or the lack of
12 evidence.

13 And neither should you be unduly influenced by the
14 notes of other jurors. I emphasize that notes are not
15 entitled to any greater weight than the memory or impression
16 of each juror as to what the testimony may have been.

17 Now, moving on to the specific charges in this
18 case, I am now going to explain the indictment which charges
19 the defendant with four offenses, each of which is called a
20 count.

21 I'm not going to read the counts verbatim because
22 you will be given a copy of the indictment for reference
23 during your deliberations, and you will have that with you in
24 the jury room.

25 I want to note now that when you receive the

1 indictment, I have made the decision after consulting with
2 the lawyers that certain limited amount of material that is
3 now extraneous to the case now that the evidence has been
4 presented has been redacted.

5 This redaction is different than the redaction you
6 saw before because there will just be spaces where the
7 language used to be and it's obvious that there is text
8 that's missing. But I have determined that those were
9 extraneous and should be removed from the indictment now that
10 all the evidence is in.

11 Where you will see the redactions or the removal of
12 text from the indictment are as follows: All of Paragraph 39
13 has been redacted, part of Paragraph 40, part of
14 Paragraph 41, and all of Paragraph 42. And as you go through
15 the indictment you will see where the redactions have been
16 made.

17 If you find the defendant guilty of any of the
18 counts charged in the indictment, the government must prove
19 to you beyond a reasonable doubt that the defendant committed
20 each element of the offense.

21 Let me begin with Count One, which is conspiracy to
22 provide material support to terrorists.

23 Count One of the indictment charges the defendant
24 with conspiracy to commit a crime. Specifically, Count One
25 charges that beginning in or about late 2002 and continuing

1 until on or about April 20, 2006, the defendant,
2 Mr. Sadequee, Mr. Syed Haris Ahmed, and others, knowingly
3 conspired to provide material support or resources, namely,
4 personnel or property, or to conceal the nature or source of
5 said material support or resources, knowing or intending that
6 the material support or resources were to be used in
7 preparation for or in carrying out a conspiracy to kill or
8 kidnap persons in a foreign country or acts of terrorism
9 transcending national boundaries.

10 Certain federal laws make it a crime for anyone to
11 conspire or agree with someone else to do something which if
12 actually carried out would amount to another federal crime or
13 offense. So under the law, a conspiracy is an agreement or a
14 kind of partnership in criminal purposes in which each member
15 becomes the agent or partner of every other member.

16 In order to establish a conspiracy offense, it is
17 not necessary for the government to prove that all of the
18 people named in the indictment were members of the scheme, or
19 that those who were members had entered into any type of
20 formal agreement, or that the members had planned together
21 all the details of the scheme, or the acts that the
22 indictment charges would be carried out in an effort to
23 commit the intended crime.

24 Also because the essence of a conspiracy offense is
25 the making of the agreement itself, it is not necessary for

1 the government to prove that the conspirators actually
2 succeeded in accomplishing their unlawful plan.

3 For you to find the defendant guilty of this count,
4 the government must prove beyond a reasonable doubt that the
5 defendant committed each element of the offense. The
6 elements of this offense are:

7 First, that two or more persons in some way or
8 manner came to mutual understanding to try to accomplish a
9 common and unlawful plan; that is, to provide material
10 support or resources, or to conceal or disguise the nature,
11 location, source or ownership of material support or
12 resources.

13 Second, that the defendant, knowing the unlawful
14 purpose of the plan, willfully joined it.

15 And third, that the defendant did so knowing or
16 intending that the material support or resources were to be
17 used in preparation for or in carrying out a conspiracy to
18 murder or kidnap people outside the United States or acts of
19 terrorism transcending national boundaries.

20 A person may become a member of a conspiracy
21 without knowing all of the details of the unlawful scheme and
22 without knowing who all of the other members are. So if a
23 defendant has a general understanding of the unlawful purpose
24 of the plan and knowingly and willfully joins in that plan on
25 one occasion, that is sufficient to convict that defendant

1 for conspiracy, even though the defendant did not participate
2 before and even though the defendant played only a minor
3 part.

4 Of course, mere presence at the scene of a
5 transaction or event, or the mere fact that certain persons
6 may have associated with each other and may have assembled
7 together and discussed common aims and interests, does not
8 standing alone establish proof of a conspiracy.

9 Also a person who has no knowledge of a conspiracy
10 but who happens to act in a way which advances some purpose
11 of one does not thereby become a conspirator.

12 Count Two. Count Two of the indictment charges
13 that beginning in or before late 2004 and continuing until on
14 or about April 20th, 2006, the defendant, Mr. Sadequee, and
15 Mr. Syed Haris Ahmed, and others, aided and abetted by each
16 other, provided or attempted to provide material support or
17 resources, namely, personnel or property, or concealed the
18 nature or source of said material support or resources,
19 knowing or intending that the material support or resources
20 were to be used in preparation for or in carrying out a
21 conspiracy to kill or kidnap persons in a foreign country or
22 acts of terrorism transcending national boundaries.

23 While Count One charged the defendant with
24 conspiring, that is, agreeing to provide material support or
25 resources, Count Two charges the defendant with actually

1 providing or attempting to provide material support. In
2 other words, Count Two charges the substantive crime which
3 the defendant is charged in Count One to have conspired to
4 commit.

5 For you to find the defendant guilty of this count,
6 the government must prove beyond a reasonable doubt that the
7 defendant committed each element of the offense. The
8 elements of this charged offense are:

9 First, the defendant provided material support or
10 resources, attempted to provide material support or
11 resources, or concealed or disguised the nature, location,
12 source or ownership of material support or resources, and

13 Second, the defendant did so knowing or intending
14 that the material support or resources were to be used in
15 preparation for or in carrying out a conspiracy to murder or
16 kidnap people outside the United States or acts of terrorism
17 transcending national boundaries.

18 Let me give you some definitions that apply to
19 these charges and my instruction on them.

20 The term provides means to furnish, supply, to make
21 ready or available, transfer or send.

22 The terms conceal or disguise mean to hide or to
23 keep from being seen, found, observed or discovered.

24 The term material support or resources includes any
25 kind of property, tangible or intangible, or service,

1 including personnel, except medicine or religious materials.

2 The term personnel refers to one or more
3 individuals, and may include the defendant himself.

4 The phrase a conspiracy to murder or kidnap persons
5 outside the United States means an agreement or mutual
6 understanding between two or more people to commit outside
7 the United States an act that would constitute murder or
8 kidnapping if it were committed inside the United States.

9 The term United States includes all the states,
10 territories and possessions of the United States, and all
11 places and waters subject to the jurisdiction of the
12 United States.

13 The term murder is the unlawful killing of a human
14 being with malice aforethought.

15 To kill with malice aforethought means an intent at
16 the time of the killing to take the life of another person,
17 either deliberately or intentionally, or to willfully act
18 with callous and wanton disregard for human life.

19 To kidnap a person means to forcibly and unlawfully
20 hold, keep, detain and confine the person against his or her
21 will.

22 So involuntariness and coercion in connection with
23 the victim's detention is an essential part of the
24 offense. It need not be proved, however, that a kidnapping
25 was carried out for ransom or personal monetary gain so long

1 as it is proved that the actor acted willfully intending to
2 gain some benefit from the kidnapping.

3 The phrase an act of terrorism transcending
4 national boundaries means conduct occurring outside the
5 United States in addition to conduct occurring inside the
6 United States that involves any one of the following
7 prohibited offenses in any one of the following special
8 circumstances.

9 The prohibited offenses are committing, threatening
10 to commit, attempting to commit, or conspiring to commit an
11 unlawful killing, kidnapping, assault with a dangerous weapon
12 against, or assault that results in serious bodily injury of
13 any person in the United States, or destruction of real or
14 personal property within the United States that creates a
15 substantial risk of serious bodily injury.

16 The special circumstances are, one, the victim or
17 the intended victim of the offense is the United States
18 government or an official or employee thereof, including a
19 member of the uniformed services; second, the offense would
20 obstruct, delay or affect interstate commerce; three, the
21 real or personal property is owned or possessed by or leased
22 to the United States in whole or in part, or the mail or any
23 facility in interstate or foreign commerce would be used in
24 furtherance of the offense.

25 The term interstate commerce refers to commercial

1 activity between places in different states.

2 The term foreign commerce refers to commercial
3 activity between some place in the United States and some
4 place outside the United States.

5 Count One and Count Two charge that the defendant
6 conspired to provide or conceal, attempted to provide or
7 conceal, or actually provided or concealed material support
8 or resources with respect to two crimes or offenses;
9 specifically, a conspiracy to murder or kidnap persons
10 outside the United States, and acts of terrorism transcending
11 national boundaries.

12 In a case like this one where two offenses, that
13 is, two objects are involved, it is not necessary for the
14 government to prove that the defendant was involved in the
15 provision or concealment of material support or resources to
16 both of these substantive offenses. It would be sufficient
17 if the government proves beyond a reasonable doubt that the
18 defendant was involved in the provision or concealment of
19 material support or resources to one of those offenses. But
20 in any event, in order to return a verdict of guilty, you
21 must unanimously agree upon which offense.

22 Also the government is not required to prove that
23 the defendant himself actually engaged in a conspiracy to
24 murder or kidnap persons outside the United States or an act
25 of terrorism transcending national boundaries. Instead, the

1 offenses charged in Count One and Count Two involve the
2 provision or concealment of material support or resources to
3 such a conspiracy to murder or kidnap persons outside the
4 United States or, two, acts of terrorism transcending
5 national boundaries.

6 The government also is not required to prove that a
7 conspiracy to murder or kidnap persons outside the
8 United States or acts of terrorism transcending national
9 boundaries have been completed, because the conduct
10 prohibited by the offenses charged include providing or
11 concealing material support or resources in preparation for
12 such crimes.

13 For the same reason, it is not necessary for the
14 government to prove the identity of any contemplated victim
15 of the conspiracy to murder or kidnap, the identity of any
16 contemplated victim or property to be destroyed as a result
17 of acts of terrorism transcending national boundaries, the
18 specific location outside the United States where the
19 contemplated murder or kidnapping was to occur, or the
20 specific location inside the United States of any acts of
21 terrorism transcending national boundaries.

22 Count One and Count Two -- let me explain what
23 material support or resources mean. Count One and Count Two
24 each charge two separate types of material support or
25 resources: Personnel and property.

1 In such a case, it is not necessary for the
2 government to prove both types of material support or
3 resources. It would be sufficient if the government proves
4 beyond a reasonable doubt one type of material support or
5 resources. But in that event, in order to return a verdict
6 of guilty, you must unanimously agree upon which type of
7 material support or resources.

8 Count Three of the indictment charges the defendant
9 with a second conspiracy to commit a crime. Some of this is
10 going to sound redundant because we are going to go over
11 information in the charge on conspiracy. I am doing this so
12 you are reminded that each count requires the same analysis
13 independent of each other.

14 So specifically, Count Three charges that beginning
15 in or about late 2004 and continuing until on or about April
16 20, 2006, Defendant Sadequee, Syed Haris Ahmed and others
17 conspired to provide material support or resources, namely,
18 personnel, to a designated foreign terrorist organization,
19 namely, Lashkar-e-Tayyiba, by agreeing to provide personnel
20 including but not limited to the defendant himself or
21 Syed Haris Ahmed to work under the direction and control of
22 Lashkar-e-Tayyiba knowing that Lashkar-e-Tayyiba has engaged
23 or engages in terrorist activity or terrorism.

24 Certain federal laws make it a crime for anyone to
25 conspire or agree with someone else to do something which if

1 actually carried out would amount to another federal crime or
2 offense. So under the law, a conspiracy is an agreement or a
3 kind of partnership in criminal purposes in which each member
4 becomes the agent or partner of every other member.

5 And as I have instructed before, in order to
6 establish a conspiracy offense, it is not necessary for the
7 government to prove that all of the people named in the
8 indictment were members of the scheme, or that those who were
9 members had entered into any formal type of agreement, or
10 that the members had planned together all of the details of
11 the scheme or the acts that the indictment charges would be
12 carried out in an effort to commit the intended crime.

13 Also because the essence of a conspiracy offense is
14 the making of the agreement itself, it is not necessary for
15 the government to prove that the conspirators actually
16 succeeded in accomplishing their unlawful plan.

17 For you to find the defendant guilty of this count,
18 the government must prove beyond a reasonable doubt that the
19 defendant committed each element of the offense. And the
20 elements of this offense are:

21 First, that two or more persons in some way or
22 manner came to a mutual understanding to try to accomplish a
23 common and unlawful plan, that is, to provide material
24 support or resources to Lashkar-e-Tayyiba, a foreign
25 terrorist organization;

1 Second, that the defendant, knowing the unlawful
2 purpose of the plan, willfully joined it;

3 Third, that the defendant did so knowing that
4 Lashkar-e-Tayyiba had engaged or engages in terrorist
5 activity or terrorism;

6 And fourth, that either the defendant is a national
7 of the United States, or the offense occurred in whole or in
8 part within the United States.

9 A person may become a member of a conspiracy
10 without knowing all the details of the unlawful scheme and
11 without knowing who all of the other members are. So if a
12 defendant has a general understanding of the unlawful purpose
13 of the plan and knowingly and willfully joins in that plan on
14 one occasion, that is sufficient to convict that defendant
15 for conspiracy even though the defendant did not participate
16 before and even though the defendant played only a minor
17 part.

18 Of course, as I told you before, mere presence at
19 the scene of a transaction or event, or the mere fact that
20 certain persons may have associated with each other and may
21 have assembled together and discussed common aims and
22 interests does not standing alone establish proof of a
23 conspiracy.

24 Also a person who has no knowledge of a conspiracy
25 but who happens to act in a way which advances some purpose

1 of one does not thereby become a conspirator.

2 Count Four of the indictment charges that beginning
3 in or before late 2004 and continuing till on or about April
4 20th, 2006, Defendant Sadequee, Syed Haris Ahmed, and others,
5 aided and abetted by each other, attempted to provide
6 material support or resources, namely, personnel, to a
7 designated foreign terrorist organization, namely,
8 Lashkar-e-Tayyiba, by attempting to provide personnel
9 including Syed Haris Ahmed and the defendant -- I'm sorry,
10 including Syed Haris Ahmed to work under the direction and
11 control of Lashkar-e-Tayyiba, knowing that Lashkar-e-Tayyiba
12 has engaged or engages in terrorist activity or terrorism.

13 For you to find the defendant guilty of this count,
14 the government must prove beyond a reasonable doubt that the
15 defendant committed each element of the offense.

16 The elements of this offense are:

17 First, that the defendant knowingly attempted to
18 provide material support or resources to Lashkar-e-Tayyiba, a
19 foreign terrorist organization;

20 Second, that the defendant did so knowing that
21 Lashkar-e-Tayyiba has engaged or engages in terrorist
22 activity or terrorism; and

23 Third, that either the defendant is a national of
24 the United States or the offense occurred in whole or in part
25 within the United States.

1 Now, let me give you some definition of terms as
2 they are used in these two counts, Three and Four.

3 As used in these instructions, the term foreign
4 terrorist organization means an organization designated as a
5 foreign terrorist organization by the Secretary of State
6 through a process established by law.

7 The term terrorism means premeditated
8 politically-motivated violence perpetrated against
9 noncombatant targets by subnational groups or clandestine
10 agents.

11 The term terrorist activity means any activity
12 which is unlawful under the laws of the place where it is
13 committed, or which if it had been committed in the
14 United States would be unlawful under the laws of the
15 United States or any state, and which involves any of the
16 following:

17 The hijacking or sabotage of any conveyance,
18 including an aircraft, vessel or vehicle;

19 The seizing or detaining and threatening to kill,
20 injure or continue to detain another individual in order to
21 compel a third person including a governmental organization
22 to do or to abstain from doing any act as an explicit or
23 implicit condition for the release of the individual seized
24 or detained;

25 Or the use of any explosive, firearm or other

1 weapon or dangerous device other than for mere personal
2 monetary gain with intent to endanger, directly or
3 indirectly, the safety of one or more individuals or to cause
4 substantial damage to property.

5 The term national of the United States means a
6 citizen of the United States.

7 For these two counts, that is, Counts Three and
8 Four, material support or resources alleged in each Counts
9 Three and Four is personnel.

10 You may not convict the defendant of Count Three or
11 Count Four unless you find beyond a reasonable doubt that the
12 defendant knowingly conspired or attempted to provide a
13 foreign terrorist organization with one or more individuals,
14 who may be and include the defendant himself, to work under
15 that terrorist organization's direction or control; or to
16 organize, manage, supervise or otherwise direct the operation
17 of that organization.

18 Individuals who act entirely independently of the
19 foreign terrorist organization to advance its goals or
20 objectives shall not be considered to be working under the
21 foreign terrorist organization's direction and control.

22 I have used the word attempt in these instructions,
23 so let me explain that to you. Count Two and Count Four of
24 the indictment charge that the defendant attempted to commit
25 the substantive offense charged. In some instances, it is a

1 crime for anyone to attempt the commission of an offense even
2 though the attempt fails and the intended offense is not
3 actually carried out or fully committed.

4 The defendant can be found guilty of an attempt to
5 commit that offense only if both of the following facts are
6 proved beyond a reasonable doubt:

7 First, that the defendant knowingly and willfully
8 intended to commit the offense as charged;

9 And, second, that the defendant engaged in conduct
10 which constituted a substantial step toward the commission of
11 the crime and which strongly corroborates the defendant's
12 criminal intent.

13 A substantial step means some important action
14 leading to the commission of a crime, as distinguished from
15 some inconsequential or unimportant act. It must be
16 something beyond mere preparation. It must be an act which,
17 unless frustrated by some condition or event, would have
18 resulted in the ordinary and likely course of things in the
19 commission of the crime being attempted.

20 Count Two and Count Four of the indictment charge
21 that the defendant and others aided and abetted by each other
22 committed the substantive offense charged. The guilt of a
23 defendant in a criminal case may be proved without evidence
24 that the defendant personally did every act involved in the
25 commission of the crime charged.

1 The law recognizes that ordinarily anything a
2 person can do for one's self may also be accomplished through
3 direction of another person as an agent, or by acting
4 together with or under the direction of another person or
5 persons in a joint effort.

6 So if the acts or conduct of an agent, employee or
7 other associate of the defendant are willfully directed or
8 authorized by the defendant, or if the defendant aids and
9 abets another person by willfully joining together with that
10 person in the commission of a crime, then the law holds the
11 defendant responsible for the conduct of that other person
12 just as though the defendant had personally engaged in the
13 conduct.

14 However, before any defendant can be held
15 criminally responsible for the conduct of others, it is
16 necessary that the defendant willfully associate in some way
17 with the crime and willfully participate in it.

18 Mere presence at the scene of a crime and even
19 knowledge that a crime is being committed are not sufficient
20 to establish that a defendant either directed or aided and
21 abetted the crime. You must find beyond a reasonable doubt
22 that the defendant was a willful participant and not merely a
23 knowing spectator.

24 In this case you have heard evidence about various
25 political or religious statements and opinions held by the

1 defendant and other individuals. The First Amendment to the
2 Constitution protects the freedom of speech, religion and
3 association. This means that individuals are permitted to
4 express controversial and even despicable views, possess
5 written material, freely practice their religion, and
6 associate with other individuals and groups.

7 A person, therefore, may not be convicted of a
8 crime solely on the basis of his opinions, written materials,
9 beliefs or associates, no matter how unpopular.

10 However, the First Amendment does not allow a
11 person to engage in a criminal conspiracy or to commit a
12 substantive crime simply because the conspiracy or other
13 crime was in part initiated, demonstrated or carried out by
14 means of or were accompanied by spoken, written or printed
15 words.

16 Therefore, you may consider evidence of statements,
17 written materials, opinions and activities of the defendant
18 and of other individuals when determining issues of the
19 existence or formation of a conspiracy, the conduct of a
20 conspiracy, intent and motive, even if those statements,
21 written materials, opinions or activities are also political
22 or religious in nature.

23 The defendant is not guilty of this offense merely
24 because you find he was a member of a terrorist group or
25 merely because he advocated on behalf of a terrorist

1 organization or merely because he believed or subscribed to
2 the goal of an organization or religious or political
3 movement or objective.

4 The term knowingly as that term is used in the
5 indictment and in my instructions means that the act was done
6 voluntarily and intentionally and not because of mistake or
7 accident.

8 The term willfully as that term is used in the
9 indictment or in these instructions means that the act was
10 committed voluntarily and purposely with the specific intent
11 to do something the law forbids, that is, with bad purpose
12 either to disobey or disregard the law.

13 I have said in these instructions and you will note
14 in the indictment that the indictment charges that certain
15 offenses were committed on or about a certain date. The
16 government does not have to prove with certainty the exact
17 date of the alleged offense. It is sufficient that the
18 government proves beyond a reasonable doubt that the offense
19 was committed on a date reasonably near the date alleged.

20 The indictment in this case also charges several
21 means of violating the law, and it's done so using the
22 conjunctive; that is, using the word "and." So let me
23 explain that term to you.

24 These jury instructions are framed in the
25 disjunctive, using the word "or." That is, the government

1 need not prove beyond a reasonable doubt that the defendant
2 engaged in each alleged means of violating the law. Proof of
3 guilt as to only one means is sufficient, but you must
4 unanimously agree as to which has been proved.

5 A separate crime or offense is charged in each
6 count of the indictment. Each count and the evidence
7 pertaining to it should be considered separately.

8 The fact that you may find the defendant guilty or
9 not guilty as to one of the offenses charged should not
10 affect your verdict as to any other offense charged.

11 I caution you that you are here to determine from
12 the evidence in this case whether the defendant is guilty or
13 not guilty. The defendant is on trial only for those
14 specific offenses alleged in the indictment.

15 Also the question of punishment should never be
16 considered by you in any way in deciding the case. If the
17 defendant is convicted, the matter of punishment is for me
18 alone to determine.

19 Any verdict that you reach in the jury room,
20 whether guilty or not guilty, must be unanimous. In other
21 words, to return a verdict you must all agree. Your
22 deliberations will be secret. You will never have to explain
23 your verdict to anyone.

24 It is your duty as jurors to discuss the case with
25 one another in an effort to reach agreement, if you can do

1 so. Each of you must decide the case for yourself, but only
2 after full consideration of the evidence with other members
3 of the jury.

4 While you are discussing the case, do not hesitate
5 to reexamine your own opinion and change your mind if you
6 become convinced that you are wrong, but do not give up your
7 honest beliefs solely because the others think differently or
8 merely to get the case over with.

9 Remember, you are in a very real way judges, judges
10 of the fact, and your sole and only interest is to seek the
11 truth from the evidence in the case.

12 When you go to the jury room in a second, you will
13 first select one of you to act as your foreperson. The
14 foreperson will preside over your deliberations and will
15 speak for you here in court.

16 I have prepared for you a verdict form. It is
17 simple. You will have this with you in the jury room. It's
18 simply a form where for each count, you have to find whether
19 the defendant was guilty or not guilty of that count. And so
20 there are four counts listed, and that will record your
21 verdict on each of the counts.

22 When you have reached unanimous agreement, you will
23 have the foreperson fill in the verdict form, date and sign
24 it, and then return it to the courtroom. Actually indicate
25 to the Court Security Officer you have reached a verdict, and

1 I will tell you when you should return.

2 If at any time you want to communicate with me, the
3 foreperson should write down your message or your question
4 and pass it to the Court Security Officer who will bring it
5 to me. I will then respond as quickly as I can. Sometimes
6 I respond in writing, sometimes I will have to bring you in
7 because I need to explain something to you.

8 But I caution you, whether in your note or whether
9 you come in here to discuss something with me, you should
10 never tell me what your numerical division is at the
11 time. That is simply information that is part of your
12 deliberations and should not be disclosed to me or to anybody
13 else.

14 These are your instructions. I'm now going to ask
15 you to retire to the jury room. You cannot begin your
16 deliberations until you get all of the exhibits. We have
17 gone through those. It's a matter of once you are there
18 delivering those to you. That will be done in the next
19 couple of minutes.

20 And then there are fifteen of you. Twelve jurors
21 deliberate in the American criminal justice system, meaning
22 three of you have served as alternates.

23 I haven't identified who the alternates are because
24 I never know whether an alternate ultimately in a case that
25 goes for a period of time will actually sit as a juror. But

1 now that we are at the point where deliberations will begin
2 and because only twelve jurors are permitted under our system
3 to deliberate, after you go back here in second and get
4 settled, I am going to call three of you out.

5 Those three -- in fact, it's Mr. Riescher,
6 Ms. Dervan and Ms. Thomas are the alternates. I will have
7 you come back out, give you some further instructions about
8 your conduct until the case is over. There is always the
9 possibility that somebody would have to -- an alternate would
10 have to replace a juror even after the deliberations have
11 started. That's happened before.

12 So your service is not yet completed. But I wanted
13 everybody to know who the alternates are because I know you
14 have been together now for eight days and -- I guess nine
15 now, and so the alternates will not be with you during your
16 deliberations.

17 So if you will please retire to the jury room, get
18 settled, do not discuss the case until you get the exhibits
19 and I give you permission through the Court Security Officer
20 to begin your deliberations.

21 (In open court without a jury present:)

22 THE COURT: All right. Are there any -- preserving
23 the objections that were asserted at the charge conference,
24 are there any objections to the charge as given?

25 MR. McBURNEY: Judge, when you were -- yes --

1 presenting what was Government's Exhibit 15 about plea
2 agreements and immunity, you identified Zubair Ahmed as
3 someone who received immunity. He has not. His has a plea
4 agreement.

5 Omer Kamal received immunity, as did Syed Haris
6 Ahmed. You did not mention Omer Kamal. You would include
7 him and then redesignate Zubair Ahmed as someone who
8 testified pursuant to a cooperation agreement.

9 THE COURT: I think yesterday we only talked about
10 the two Ahmeds, so I do think I need to recharge on that.

11 MR. McBURNEY: And then if there is not an
12 objection from the defense, I just want to note this for the
13 record. When you were describing the date range for
14 Count One, you had it start in late 2002 rather than 2004.
15 For the remaining three counts you got it late 2004 through
16 April 20th, 2006.

17 I don't think you need to recharge on that. I'm
18 just flagging it for the record. But the first one, yes.

19 THE COURT: They have the indictment, of course,
20 with them. So what's the defense's position on the last
21 issue?

22 MR. SAMUEL: I think that should be corrected only
23 because the 404 (b) issue can confuse them a little bit.

24 We would just request that we preserve the
25 objections and all the arguments made yesterday.

1 THE COURT: Yes, you may do that.

2 All right. So that was in what charge?

3 MR. McBURNEY: Your description of Count One, when
4 you gave the offense instructions for Count One, you listed
5 it as late 2002 rather than late 2004.

6 THE COURT: So I just misspoke, because I have in
7 the charge 2004. But you are sure I said 2002?

8 MR. McBURNEY: That's the unanimous recollection of
9 this table.

10 THE COURT: Well, we know the quality of your
11 unanimous recollections.

12 I am going to say within Count One -- I'm not going
13 to read the whole thing, of course -- that I misspoke and
14 that the count charges that beginning on or about late 2004
15 and not 2003 and continuing to on or about April 20th, 2006,
16 that that's the applicable date range.

17 Is that a sufficient explanation for that?

18 MR. McBURNEY: Yes.

19 THE COURT: Let me just look at the immunity.

20 Actually, I mean, this has to be rewritten, because
21 I can't say that he's a witness who's been promised that he
22 will not be charged or prosecuted, because they know that
23 he's been charged and prosecuted.

24 MR. McBURNEY: Well, for Syed Haris Ahmed,
25 correct. Omer Kamal, that fits.

1 THE COURT: But you have to say different things
2 for different people.

3 MR. McBURNEY: Yes.

4 THE COURT: We clearly should have gone over this
5 last night, and I'm sorry that we didn't.

6 So in this case the government called a witness,
7 Syed Haris Ahmed, who has been promised that he will not be
8 charged or prosecuted for the testimony that he gave in this
9 trial.

10 I guess we say the government also called -- what's
11 Mr. Omer's first name?

12 MR. McBURNEY: It is Omer, last name Kamal.

13 THE COURT: So he's been given a nonprosecution
14 agreement?

15 MR. McBURNEY: Yes, sir.

16 THE COURT: Did that come out in evidence?

17 MR. McBURNEY: It did.

18 THE COURT: Then the government also called as one
19 of its witnesses Mr. Zubair Ahmed with whom the government
20 has entered into a plea agreement that provides for the
21 possibility of a lesser sentence than he otherwise would have
22 been exposed to.

23 We say such plea bargain, we are really only
24 talking about the plea bargaining with Mr. Zubair Ahmed;
25 correct?

1 MR. McBURNEY: Correct.

2 THE COURT: Okay. Let me just read this to you so
3 that I get it right this time.

4 In this case the government called Mr. Syed Haris
5 Ahmed -- I'm sorry. In this case the government called a
6 witness, Mr. Syed Haris Ahmed, who has been promised that he
7 will not be charged or prosecuted for the testimony he gave
8 in this trial.

9 The government also called Mr. Omer Kamal as a
10 witness who has been promised he will not be charged or
11 prosecuted.

12 The government also called as one of its witnesses
13 Mr. Zubair Ahmed, a person named as a co-conspirator in the
14 indictment, with whom the government has entered into a plea
15 agreement providing for the possibility of a lesser sentence
16 than the witness would have otherwise been exposed to.

17 This plea bargaining, as it's called, with
18 Mr. Zubair Ahmed has been approved as lawful -- and then
19 carry on with the instruction.

20 Is there any objection to that revision?

21 MR. McBURNEY: No.

22 MR. SAMUEL: No, Your Honor.

23 THE COURT: All right. Can we have them come back
24 in for just two short follow-up matters, and then when I send
25 them back out, I'm going to keep Mr. Riescher, Ms. Dervan and

1 Ms. Thomas here; okay?

2 (In open court with a jury present:)

3 THE COURT: One of the things I do during that
4 break is to see if I have made any mistakes in the charge,
5 which obviously is an important part of the case, and I have
6 realized that I made a couple of mistakes that I want to
7 correct now.

8 The first is in Count One I gave you a date range.
9 I may have said late 2002 and continuing until on or about
10 April 20th, 2006. Count One charges that beginning in or
11 about late 2004, not 2002 -- that's in the indictment you
12 will see -- and continuing until on or about April 20th,
13 2006.

14 So I'm correcting if I said 2002 -- and I think
15 I probably did -- as the beginning of that date range, it
16 should be 2004.

17 I made one instruction which I think was very
18 confusing and I'm just going to give that again because it
19 has to do with credibility of witnesses and three specific
20 witnesses. So let me just give you that instruction again.

21 I told you that the testimony of some witnesses
22 must be considered with more caution than the testimony of
23 other witnesses.

24 In this case, the government called a witness,
25 Mr. Syed Haris Ahmed. Mr. Ahmed has been promised that he

1 will not be charged or prosecuted for the testimony he gave
2 in this trial. You already know that he was convicted of
3 previous offenses, but there is an agreement that has been
4 reached that he will be not charged or prosecuted for the
5 testimony he gave here.

6 The government also called Mr. Omer Kamal as a
7 witness, and he has been promised that he will not be charged
8 or prosecuted.

9 And then, finally, the government called as one of
10 its witnesses Mr. Zubair Ahmed, a person named as a
11 co-conspirator in the indictment, with whom the government
12 has entered into a plea agreement providing for the
13 possibility of a lesser sentence than the witness would
14 otherwise be exposed to.

15 This plea bargaining, as we call it, with
16 Mr. Zubair Ahmed has been approved as lawful and proper, and
17 is expressly provided for in the rules of our
18 court. However, a witness who hopes to gain more favorable
19 treatment may have a reason to make a false statement because
20 the witness wants to strike a good bargain with the
21 government.

22 So while witnesses of these kinds may be entirely
23 truthful when testifying, you should consider such testimony
24 with more caution than the testimony of other witnesses.

25 And of course the fact that a witness has pled

1 guilty to the crime charged in the indictment is not evidence
2 in and of itself of the guilt of any other person.

3 Does that clarify --

4 MR. McBURNEY: Yes, sir. Thank you.

5 THE COURT: Does that clarify it, Mr. Samuel?

6 MR. SAMUEL: (Nods head.)

7 THE COURT: All right. Thank you.

8 Please retire again, except if I could have
9 Mr. Riescher, Ms. Dervan and Ms. Thomas stay, I will give you
10 some further instructions.

11 (In open court with only the alternates present:)

12 THE COURT: I will say it's always hard for me to
13 do this. I have gone back and forth to decide whether or not
14 to tell the alternates at the beginning or whether I ought to
15 wait and tell them at the end. There are two options,
16 neither of which are perfect.

17 I just have decided in my practice to do that at
18 the end, because I want everybody to listen intently as if
19 they are going to deliberate, because there is the
20 understanding, and it's happened once before, where somebody
21 had to leave the trial and an alternate during the course of
22 the trial took over.

23 I have watched you, you have paid very careful
24 attention to what's going on. And I always feel bad that you
25 have invested all this time and that you may not

1 deliberate. But I hope you understand that that's the way
2 the process works.

3 This was a case where I had one extra alternate
4 just because of the nature of the case and I wanted to make
5 sure that if something were to happen, that we could in fact
6 have a deliberating jury.

7 So I hope you understand and that you accept that
8 I'm trying to do what is best in the criminal justice system
9 and at the same time what is best for you.

10 What I do at this point, though, is you are
11 not required to stay here during the deliberations. There
12 are some courts that actually make you stay until it's over
13 in case someone has to be replaced. I don't think that's
14 fair.

15 And I also know that now I'm going to tell you you
16 still may not discuss the case with anybody, even though I'm
17 going to allow you to go about your regular responsibilities.
18 But there is a chance that something could happen to one of
19 the jurors and we would have to call one of you back to serve
20 as a juror, which is why you can't discuss the case with
21 anybody else.

22 Will each of you pledge not to discuss the case
23 when I release you until you hear that the case is over?

24 All right. They have all agreed.

25 We have your contact information, and when the case

1 is over -- well, if we need you, we will call you. When the
2 case is over, I will personally call you and tell you what
3 the result was and again thank you for your extended service
4 albeit not in the jury box or in the deliberation
5 room. I figure that's the least I can do.

6 So with that, you are released subject to being
7 called to replace a juror. Don't discuss the case with
8 anybody. And then we will be in communication sometime in
9 the future.

10 Thank you again for your service.

11 (In open court without jurors present:)

12 THE COURT: Everybody has gone through the evidence
13 and it's all here ready to be delivered to the jury?

14 MR. McBURNEY: Yes, sir.

15 MR. SAMUEL: I was wondering whether the statements
16 were going out. I know they were admitted and there was no
17 objection, but usually a witness's statement, prior statement
18 does not go out to the jury.

19 Mr. Sadequee would ask the two or three -- I know
20 two, maybe three --

21 THE COURT: Well, they are admitted, aren't they?

22 MR. SAMUEL: Well, they were admitted for purposes
23 of identification, for purposes of cross-examination.

24 THE COURT: I think they were admitted as
25 exhibits.

1 MR. SAMUEL: Well, I agree there was no objection,
2 but sometimes exhibits come in that don't go out to the
3 jury.

4 I think written statements of witnesses including
5 prior written statements, just like depositions, don't go
6 out. I don't think Mr. Sadequee articulated that at the time
7 it was introduced, but --

8 THE COURT: Well, in my court, because I believe
9 the Federal Rules of Evidence mean that if you are going to
10 use it for a limited purpose it can be identified, but it's
11 not admitted as an exhibit.

12 I have told them that -- I told them in their
13 preliminary instructions that if in fact there is a portion
14 of a document, that they don't have to worry about the
15 context in which it's in because they will get the whole
16 statement, and I have told them that anything that's an
17 exhibit is something that will be available to them during
18 their deliberations.

19 You are looking at a rule. Is there a rule,
20 Mr. McBurney?

21 MR. McBURNEY: Yes, my associate has pointed out --

22 THE COURT: I would be very careful relying upon
23 his advice.

24 MR. McBURNEY: I'm going to trust this one.

25 Rule 613, prior statements of witnesses. Extrinsic

1 evidence of prior inconsistent statements are not admissible
2 unless and until we went through the procedure we did, which
3 was to elicit the current statement and then present the
4 prior inconsistent statement and it was identified, it was
5 tendered.

6 And frankly, if there was going to be any
7 limitation placed on it, which I don't think 613 (b) allows,
8 that was the time, when we tendered it.

9 And the Court has made it very possible for
10 Mr. Samuel or Mr. Wahid to share with Defendant Sadequee any
11 point they may have about when to object or when not or any
12 fine point like that, and that time has passed.

13 It's in. It's been referenced. Parts of it have
14 been referenced. And to your point, you have explained to
15 the jury they will get to see the whole thing.

16 And I think that those two exhibits, which
17 I believe are 167 and 168, they were treated like any other
18 piece of evidence, and properly so.

19 THE COURT: Mr. Samuel, do you have any authority
20 that would allow me at this point on this record not to allow
21 them to go to the jury?

22 MR. SAMUEL: Well, obviously no objection was made
23 at the time. I wasn't making objections then, nor do I think
24 I was allowed actually at that point.

25 THE COURT: Well, let me correct that. You were

1 appointed standby counsel. I told you at any time that you
2 could consult with him, that he was available to consult with
3 you.

4 And we had a long discussion last night about a
5 variety of things, and it's only at this what I would say is
6 the 12th hour that this has ever come up. And you have had
7 lots of comments to me about legal matters on breaks and
8 certainly had a long discussion last night.

9 So I take a little offense that you claim that you
10 couldn't make objections or that you couldn't have brought
11 this up earlier.

12 MR. SAMUEL: I could have certainly brought it up
13 earlier. I couldn't bring it up while the witness was being
14 cross-examined.

15 I don't think while the jury was in here and a
16 witness was being cross-examined and the prosecutor was
17 introducing documents that I -- I never did that during the
18 trial. I didn't think I was permitted to.

19 I certainly could have done it at the end when --

20 THE COURT: Well, you were not permitted to because
21 your client --

22 MR. SAMUEL: Sure.

23 THE COURT: -- didn't permit you to because he
24 insisted on being his own lawyer in the case.

25 And I explained to him that he was responsible for

1 all of the rules of evidence and procedure, and he understood
2 that and agreed to it.

3 What are the exhibit numbers?

4 MR. McBURNEY: 167 and 168, I believe.

5 There were in fact three statements. We tendered
6 only two of them. That's why it's just those two numbers.

7 MR. SAMUEL: I don't have anything else to argue.

8 I'm not sure I agree with Mr. McBurney's associate
9 that 613 makes the document admissible for all purposes.
10 I think it can be identified and you can cross-examine the
11 witness with it. I don't believe that makes it admissible in
12 total for the jury's consideration.

13 In fact, the only portion that is admitted
14 technically is the inconsistency itself, not the entire
15 document, unless the opposing party then wants to put it in
16 context.

17 If a witness has given, as in this case, a
18 multipage statement, a couple lines of which the government
19 wants to cross-examine him with or impeach him with a prior
20 inconsistent statement, only the inconsistency is admissible,
21 not the entire document.

22 All of which is not necessarily relevant to the
23 question of do we send prior written statements of witnesses
24 into the jury room for purposes of deliberations.

25 THE COURT: Well, this is a very interesting

1 discussion, which now eight days into the case seems to me
2 exceedingly late, considering that I have not put any
3 restrictions on the government. We have shown portions of
4 the statement. They have been used in testimony, they have
5 been used in argument.

6 And to come back now -- I guess I would have to go
7 through and create a record as to what has been shown and
8 what hasn't been shown, because nobody raised it with me that
9 only portions of these you now contend should be admitted.

10 MR. SAMUEL: No, no, I didn't articulate it well.

11 The document itself doesn't go back to the jury
12 room in my opinion, no matter how much of it was shown to the
13 witness or no matter how much of it was used to
14 cross-examine.

15 The fact that it's portrayed to the jury, portrayed
16 to the witness on the screen, it would be no different than
17 if we took a deposition in a -- not that I know much about
18 it, but in a civil case and you cross-examine a witness with
19 a deposition. You could show it on the screen, you can
20 cross-examine him with it, but you wouldn't take the
21 deposition and send it back to the jury, even though you
22 cross-examined him with it, even though it may be identified
23 during the trial.

24 THE COURT: I don't know, I have been doing this
25 for a long time. Nobody ever introduces and marks as an

1 exhibit a deposition transcript.

2 What they do is they ask somebody who has made a
3 statement, they show them the transcript, they admit that
4 they -- they show that they testified under oath, they admit
5 that they have taken the oath before, then they read the
6 prior inconsistent statement and it's over.

7 Here the additional step is actually -- so it's
8 never an issue of what goes back because that never goes back
9 because it's not an exhibit. Here it has been introduced as
10 an exhibit to which there was no objection, and in the
11 absence of an objection I admitted it.

12 Now, I think the government should evaluate whether
13 or not they want this to be an issue in the case.

14 MR. McBURNEY: I'm confident that this isn't going
15 to be what sends this case back.

16 I think the facts of this case make those two
17 statements particularly relevant for the jury's
18 consideration. Syed Haris Ahmed said in response to a
19 question from the defendant I would have signed anything. He
20 put the entire contents of those statements at issue. Boy,
21 when they were done with me, I would have signed
22 anything. He basically disavowed the contents of the entire
23 statements.

24 THE COURT: The other thing that happened in this
25 case is we went through those whole statements and

1 everywhere -- we went through the whole thing with him so
2 that he -- and he showed where he in fact changed the
3 statements and initialed the changes, that he had a chance to
4 review them all.

5 So they did come in for a purpose other than the
6 purpose that you are claiming that they came in for. A lot
7 of it was in response to his testimony, which I think was
8 elicited by Mr. Sadequee or at least it was inquired into by
9 Mr. Sadequee about whether or not he would have signed
10 anything, and then I think it was in fact on redirect that
11 they went through the statements to show that in fact, no, he
12 had gone through them, read them all, signed them, and where
13 he wanted to make corrections, he made corrections.

14 I think for that reason they are admissible, and
15 I overrule that objection.

16 I'm afraid to ask if there is anything else. There
17 seems like there always is. But is there anything else?

18 MR. McBURNEY: No.

19 THE COURT: Mr. Sadequee?

20 MR. SADEQUEE: No.

21 THE COURT: All right. Let's take -- I'm going to
22 deliver the exhibits to the jurors and instruct them that
23 they may begin their deliberations.

24 Any objection to me giving that instruction?

25 MR. McBURNEY: No.

1 THE CLERK: Do you want to take Exhibit 1 --

2 MR. McBURNEY: Yes, however you want to do it.

3 THE CLERK: We could take it off. There is a stand
4 back there.

5 THE COURT: Jessica has your cell phone numbers,
6 does she?

7 MR. SAMUEL: We will be downstairs or in the room.

8 THE COURT: Downstairs in the cafeteria?

9 So you know how to get in touch with everybody if
10 we have to, Jessica?

11 THE CLERK: Yes.

12 THE COURT: All right. Anything else we need to
13 discuss before we recess?

14 MR. McBURNEY: No.

15 THE COURT: Anything else, Mr. Sadequee?

16 MR. SADEQUEE: No.

17 THE COURT: All right. We will be in recess.

18 (A recess is taken at 1:46 p.m.)

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1 Tuesday Afternoon Session

2 August 11, 2009

3 4:41 p.m.

4 -- -- --

5 (In open court without a jury present:)

6 THE COURT: Before we get started, I did talk to
7 Mr. Samuel about -- having reviewed the record following my
8 charge, I did tell Mr. Samuel and confirmed with him that his
9 objections to the charge conference yesterday and the
10 arguments that he made are preserved on behalf of you,
11 Mr. Sadequee, which I implied -- which I understood,
12 interpreted to mean that there were no objections to the
13 charge as was given.

14 But in going through the record, I noticed that I
15 apparently didn't specifically ask that, and I wanted to make
16 sure that my understanding was correct, that while your
17 objections and the arguments that were made at the charge
18 conference last night are preserved, that there were no
19 objections to the charge as given after I made the two
20 corrections that I made?

21 Is that correct, that there are no objections to
22 the charge as it was actually given?

23 MR. SADEQUEE: Yes, no objections.

24 THE COURT: Anything else we need to take up before
25 we bring the jurors in?

1 MR. MCBURNEY: No, sir.

2 MR. SAMUEL: No, sir.

3 THE COURT: They just reported to me that they were
4 at a good breaking point, and so I'm going to dismiss them
5 for the evening with their admonition. And they told me that
6 they wanted to start again tomorrow at 9:00.

7 So if we could bring them in, please?

8 (In open court with a jury present:)

9 THE COURT: Well, ladies and gentlemen, thank you
10 for your hard work so far. I understand that you believe
11 that you are at a good breaking point and that you would like
12 to break for the evening and return tomorrow at 9:00. Is
13 that correct?

14 JURY FOREPERSON MEYER: Yes, sir.

15 THE COURT: I think that makes sense.

16 Of course, it's even more important -- although
17 it's always been important, but it's as important that you
18 not discuss the case with anybody because you are now in
19 deliberations only among those people that you are allowed to
20 deliberate with, and that's you.

21 And I would get away from this this evening, put it
22 aside, have a good evening's rest, spend some time with your
23 families, and then come and start fresh tomorrow. In the
24 interim, don't discuss the case amongst yourselves or with
25 anybody else including your family.

1 So with that -- the other instruction is you cannot
2 begin deliberating again until everybody is here. But as
3 soon as everybody is here, go ahead and start your
4 deliberations. You won't have to come back in and I won't
5 have to give you the go-ahead.

6 Once you, Mr. Foreman, determine everybody is
7 there, go ahead and begin the deliberations again.

8 All right. Have a good evening. We will see you
9 tomorrow.

10 (In open court without a jury present:)

11 THE COURT: All right. Anything else we need to
12 take up?

13 MR. McBURNEY: No, sir.

14 THE COURT: Mr. Sadequee?

15 MR. SADEQUEE: No.

16 THE COURT: All right. Then we will be in recess,
17 and we will be back in touch with you when we hear something
18 further tomorrow. We are in recess.

19 (Proceedings adjourn at 4:45 p.m.)
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C E R T I F I C A T E

UNITED STATES OF AMERICA :
:
NORTHERN DISTRICT OF GEORGIA :

I, Nicholas A. Marrone, RMR, CRR, Official Court Reporter of the United States District Court for the Northern District of Georgia, do hereby certify that the foregoing 122 pages constitute a true transcript of proceedings had before the said Court, held in the city of Atlanta, Georgia, in the matter therein stated.

In testimony whereof, I hereunto set my hand on this, the 1st day of September, 2009.

/s/ Nicholas A. Marrone

NICHOLAS A. MARRONE, RMR, CRR
Registered Merit Reporter
Certified Realtime Reporter
Official Court Reporter
Northern District of Georgia